UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

05-CR-060 (S-11)

-against- United States Courthouse

: Brooklyn, New York

VINCENT BASCIANO,

Defendant.

: May 4, 2011
11:00 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by CAT.

(Jury not present)

THE COURT: State your appearances.

MS. MERKL: Taryn Merkl, Jack Dennehy, Nicole Argentieri, and Stephen Frank, for the government.

We have a brief application before the jury comes out.

MR. GOLTZER: George Goltzer, Richard Jasper, Ying Stafford, for the defendant.

THE COURT: Good morning. All right.

Please be seated in the back.

We are going to continue with the cross-examination.

MR. GOLTZER: Yes.

THE COURT: Bring in the witness, please.

The daughter of the victim may be testifying, you know that?

MR. GOLTZER: Yes, sir.

THE COURT: There's some question about whether we should preclude any questioning about, you know, one particular incident that I don't want to discuss really in her background. Did you see the --

MR. GOLTZER: I have no desire to go into it.

THE COURT: So that's resolved.

MR. GOLTZER: It would seem insensitive to do that. Also, in that regard, Mr. Jasper may have an application to limit part of what may be the proffered testimony concerning wedding photographs. This hardly seems to be the time to do it.

THE COURT: We will deal with it before she takes the -- this is with regard to the same witness, I take it?

MR. GOLTZER: Yes, sir.

THE COURT: We will take it up at lunchtime.

MR. GOLTZER: Something came up yesterday which I'd like to raise now -- not by way of a motion to strike or objection. Mr. Cicale indicated that Mr. Basciano was arrested for the Santoro homicide. I don't expect it's a secret any more. When it comes to time to, perhaps, impeach him with the prior inconsistent statement, I would like the Court to think about, if you would be so kind, re-thinking the issue -- the Giovanelli issue as to whether when I refer to a prior trials I can refer to the Gotti trial or the prior Basciano trials. It seems to me there's no prejudice to the government at this point, and it would very much allow the jury to evaluate just who the witness was, the reasons we stated in our prior memorandum, and I will, not of course, go into the issue of what the verdict was in either trial --

either Gotti or Basciano's trials.

MS. ARGENTIERI: Judge, Mr. Cicale testified that exactly once to put in context what Michael Nose said -- that Michael Nose and Vinny had that relationship of trust because Michael Nose, when the defendant was arrested for the Santoro homicide said to him you are lucky you didn't get arrested too. The evidence was Vinny Basciano told Michael Nose about participation in a murder and it went to their relationship at trial between all of the partie. It was one statement, very limited. I don't really understand Mr. Goltzer's argument about how that sort of reopens the door to different proceedings Mr. Cicale has testified on, particularly the Gotti trial. It seems largely irrelevant and designed to confuse the jury and the issues.

THE COURT: We will take it up later.

Thank you for bringing it to my attention.

D O M I N I C K C I C A L E, having been previously duly sworn/affirmed, resumed the stand and testified further as follows :

MR. GOLTZER: The only exhibit I'm going to show the witness will be in evidence.

THE COURT: Very well.

(The following took place in the presence of the jury)

THE COURT: Please be seated, everyone. Good

morning, members of the jury.

First of all, let me apologize for the delay beginning today, which was unavoidable. We will proceed with the continuation of cross examination of the witness.

The witness is reminded he is still under.

You may inquire.

MR. GOLTZER: Thank you, Your Honor.

Good morning, ladies and gentlemen.

CROSS-EXAMINATION (Cont'd)

BY MR. GOLTZER:

Q Mr. Cicale, when we left off yesterday I believe you indicated that you didn't want to kill a man by the name of Harold Lane, you thought about hurting him; is that right?

A Yes, that's correct.

Q Did it ever cross your mind to kill Lane?

A At this point in time I am not --I wouldn't be accurate saying yes or no.

Q Were you asked these questions and did you give this answer --

MR. GOLTZER: I am referring, Your Honor, to the GX 3500 DC 84D as in David.

THE COURT: Just one moment. Yes, can you give me a page number?

MR. GOLTZER: 6237 to 6238.

THE COURT: Go ahead.

MR. GOLTZER: Thank you.

Q At a prior trial, Mr. Cicale, the page 6237-6238 lines 24 and 25 did you give the following answer to the following question under oath:

Question. You wanted to kill Harold Lane, correct, sir?

Answer: It might have crossed my mind, yes, sir.

MS. ARGENTIERI: Objection; not prior inconsistent statement.

THE COURT: You may ask the question.

Q Did you give the following answer under oath to the following question --

THE COURT: Well, did you hear the question?

THE WITNESS: Yes, sir, Your Honor.

THE COURT: Do you have an answer?

THE WITNESS: Yes.

Q Did you give that answer to that question under oath?

A Could you just repeat the answer please.

Q (Reading): It might have crossed my mind, yes, sir.

A It might have crossed my mind is either yes or no. It's -- you know, it could go either way.

Q The question, Mr. Cicale, that you were asked -- let me ask it again: Did you give this answer to this question under oath at a prior trial:

Question: You wanted today kill Harold Lane,

correct, sir?

Answer: It might have crossed my mind, yes, sir.

A If that's what it says then, yes, that's what I said.

Q Was it true when you said it under oath?

A It might have crossed my mind?

Q Yes.

A Yes, sir.

Q So it might have crossed your mind to kill Harold Lane?

A Might, yes.

Q Did it cross your mind to kill Harold Lane?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q After Joey Gambina decided that he wasn't going to kill Randy Pizzolo is it accurate to say that you wanted to kill Joey Gambina?

A Yes, sir, that's accurate.

Q And you were concerned about Joey Gambina, weren't you, Joey Gambina?

A Yes, sir, I was.

Q And you were concerned about Joey Gambina because he'd committed to killing Randy Pizzolo, correct?

A That's correct.

Q And you were concerned about Joey Gambina because, god forbid, if he was ever arrested he would be aware that you and Anthony Aiello were given permission to kill Randy Pizzolo; is

that correct?
A No, not the way you put it. No, sir, it's not.
Q Were you asked -- well, I'm referring to Government Exhibit 3500 DC 85B as in boy page 1226 to 1227 lines 24 through page 1227 line three?
THE COURT: What lines.
MR. GOLTZER: I will be starting at the top of page 1226 line 24 and continuing on page 1227 line three.
Q By the way, before I ask the question, Mr. Cicale --
MR. GOLTZER: Well I'll ask the question, Judge, when you've found the place.
THE COURT: Yes, but you've got to ask it in the context of the transcript and not in an isolated context, otherwise, the witness won't be able to answer the question.
You an start at line 17 and read the whole thing.
MR. GOLTZER: I don't have that in front of me, Judge.
(Ms. Argentieri handing)
MR. GOLTZER: Okay. Beginning line 17 Your, Honor?
THE COURT: Yes, please.
MR. GOLTZER: Thanks for the page.
Q Beginning at line 17, did you give the following answers to the following questions under oath at a prior trial:
Question: After Vinny Basciano was arrested Joey Gambina did not want to kill Randy Pizzolo any more?

THE COURT: That was an answer. Go ahead.

Q Question: How did you react to that?

Answer: I was upset.

Question: Why?

Answer: Because Joey Gambina was aware that we were looking to kill somebody.

Question at line 24: Why did that concern you.

Answer: Because Joey Gambina had committed us to kill Randy Pizzolo and by Joey Gambina stepping out, god forbid if law enforcement ever arrested him, Joey Gambina would be aware that myself and Anthony Aiello were given permission to kill Randy Pizzolo.

Did you give those answers to those questions under oath, sir, at a prior trial?

A Yes, sir.

Q So when I asked you before whether you were concerned about Gambina knowing that you had received permission there was nothing inaccurate about that, was there?

A Yes, the way you phrased it, yes, it was, sir.

Q What was inaccurate about the way I phrased it Mr. Cicale?

A You didn't put Joey Gambina in the equation that he was part of the hit team.

Q But what is accurate is that you testified under oath that you had received permission to kill Randy Pizzolo?

A Yes.

MS. ARGENTIERI: Objection.

Q Had you sought permission from someone to kill Randy Pizzolo?

A Did I ask permission to kill Randy Pizzolo?

Q Yes.

A No, sir, I did not.

Q Did you testify under oath that you were concerned about Gambina knowing that you had received permission?

MS. ARGENTIERI: Objection, Judge.

THE COURT: Sustained; asked and answered.

Q The word permission was yours, correct, under oath?

A If that's what it says in the transcripts that I stated yes, it was.

Q Is there any dispute as to the accuracy of the transcript?

MS. ARGENTIERI: Objection, Judge.

THE COURT: Sustained.

Q You don't deny making that statement under oath, do you?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

MR. GOLTZER: I offer that portion of the transcript, Judge.

THE COURT: It's on the record. You just read it to the jury.

MR. GOLTZER: Thank you, very much.

Q Did you receive an okay from Michael Mancuso to kill Randy Pizzolo?

MS. ARGENTIERI: Objection.

THE COURT: You may answer.

A I was told by Mr. Mancuso.

Q The question, sir, is whether you received an okay. Do you know the difference between an okay and an order?

THE COURT: This is not a debate. If you can't answer the question just say you can't answer it. If you want a yes or no answer, if you can't answer it yes or no, don't answer it, and we'll move on.

A I can't answer that question, sir.

Q Do you know if there's a difference in the mob between an okay and an order?

A Yes, sir, I do.

Q An okay is when someone requests permission to do something; is that correct?

A It can go either way, yes, sir.

Q And when someone gives you an okay who is your superior, it is your choice whether to do it or not; is that right?

MS. ARGENTIERI: Objection; unclear; calls for speculation.

THE COURT: Den -- speculation? Sustained.

Q What is an okay in general terms, if you know?

MS. ARGENTIERI: Objection; speculative; unclear.

THE COURT: In general terms, sustained.

Q Did you ever ask for an okay to beat somebody up?

A I asked for permission to beat somebody up.

Q What does it mean to get the okay to beat somebody up?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q When you asked somebody for permission to beat somebody up did you get the okay?

A Which person are we talking about?

Q Which person would you like to talk about?

THE COURT: Sustained.

Q Which person did you ask permission to beat up?

A Harold Lane.

Q When you asked for permission to beat up Harold Lane whose permission did you ask?

A I asked Vinny Basciano for permission to hurt Harold Lane.

Q And were you asking Vinny Basciano for an okay to hurt Harold Lane?

A Yes, I was.

Q And did you get the okay?

A No, sir. I was told not to hurt Harold Lane, to go pursue it with an attorney.

Q Would an okay have given you permission to hurt Harold

Lane?
A Yes, sir.
Q Would you have been able to call it off because it was not an order?
A That was my decision so, yes, if I wanted to being that I brought it to Vinny Basciano I could have called it off if I wanted to.
Q Now, did you ask anyone's permission or did you ask for an okay of anyone to kill Randy Pizzolo?
A No, sir, I didn't ask for an okay to kill Randy Pizzolo. Randy, I was ordered to kill Randy Pizzolo.
Q So when you said you were concerned about Joey Gambina knowing that you had requested or received permission to kill --

MS. ARGENTIERI: Objection.

THE COURT: Sustained. That is a misstatement. Don't go there.

Q You sent a message to Michael Mancuso with the words footings and foundation; is that correct?
A That's incorrect sir.
Q You never used the words footing and foundation in a message to Vinny Basciano?
A You asked the question did I send a message to Mr. Mancuso.
Q I stand corrected by you, sir. I withdraw the question.

Q Did you send a message to Vincent Basciano while he was in jail using the words footings and foundation?
A That was part of the message, sir, yes.
Q So part of the message contained the words footings and foundation?
A Yes, sir, that's correct.
Q By using the words footings and foundation were you trying to devise a way to let Vinny Basciano know who actually gave you the okay to complete the task?
A Could you repeat the question, please.
Q When you used the words footings and foundations, were you trying to devise a way to let Vincent Basciano know what happened and who actually gave you the okay to complete the task?
MS. ARGENTIERI: Objection; compound.
THE COURT: Sustained.
Q Were you trying to devise a way to let Vincent Basciano know what happened?
A I did formulate a way to inform Vinny Basciano on what happened.
Q And were you trying to also inform Vincent Basciano who actually gave you the okay to complete the task?
MS. ARGENTIERI: Objection to the term okay.
MR. GOLTZER: I have a good faith basis. I will follow up.

THE COURT: You may answer with -- well, would you repeat the question please.

Q Were you also trying to formulate a way to advise Vincent Basciano who actually gave you the okay to complete the task?

A You just lost me with that question, sir.

Q Did it confuse you?

A Yes, it did.

Q When you said -- when you sent word to Vincent Basciano that Michael had me take care of the footings and foundation; is that correct?

A Yes, sir, that's correct.

Q And that was sometime in December of 2004?

A It was either sometime -- I'm pretty sure it was December of 2004; that is correct.

Q It was after Randy Pizzolo was killed?

A Yes, sir, that's correct.

Q And it was after Vincent Basciano had been arrested before Randy Pizzolo was killed?

A It was after the --

THE COURT: Stop.

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Basciano was arrested November 19, 2004?

A If that's the date you're saying, yes, sir.

Q You said it was the 17th?

A Yes, sir, that's correct.
Q Whether your date is right or wrong, Vincent Basciano, according to your recollection, was arrested sometime in November 204?
A Yes, sir, that's correct.
Q And that was a couple of weeks before Randy Pizzolo's death, approximately?
MS. ARGENTIERI: Objection.
THE COURT: You many answer, if you know.
A Yes, sir.
Q And after Mr. Pizzolo's death you sent a message to Basciano that Michael had me take care of footings and foundation; is that correct?
A Yes, sir, that's correct.
Q And when you sent that message using the words footings and foundations were you trying to devise a way to let Vincent Basciano know what happened?
A I did devise a way to let Vincent Basciano know what happened.
Q And that was the way, by mentioning the word footing and foundation?
MS. ARGENTIERI: Objection.
THE COURT: You may answer.
A Yes, sir, that's correct.
Q And were you also trying to let Vincent Basciano know who

actually gave you the okay to complete the task of killing Pizzolo?

A I did let Vinny Basciano know about who gave the final order to kill Randy Pizzolo.

MR. GOLTZER: Referring, Your Honor, to Government Exhibit 3500 DC 84 B as in boy, pages 83 to -- 5843, I'm sorry, 5843 to 5844?

THE COURT: I'm sorry 3500 DC 84B?

MR. GOLTZER:yes, sir. Beginning at page 5843 line 19.

THE COURT: Hold on (perusing). Go ahead.

Q At a A prior trial, Mr. Cicale, did you give the following answers to the following questions:

Question: You sent a message with the word footings and foundations?

Answer: Correct.

Question: What did you mean by that word?

Answer: I was trying to devise a way to let Vincent Basciano know what happened and who actually gave me the okay to complete this task, and on the Schier's Avenue job after Randy was getting in Vinny's bad graces we started on the footings. There were imperfections. One footing had a barrel (ph) sticking out of it and another footing had a piece of plywood in it, so I figured Vinny Basciano would realize when

I told him that Michael had fixed the footings that he would realize what that meant because that was pertaining to Randy Pizzolo.

Did you give those answers to those questions under oath at a prior trial?

A Yes, sir, that's correct.

Q The word okay was your word in your answer, was it not?

A Yes, sir.

Q You actually meant to say order, right?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Michael gave the order to kill Randy Pizzolo; is that correct?

A Following Vinny Basciano's instructions, yes, sir, that's correct.

Q You said to the jury yesterday that you had received the instructions from Vinny Basciano to -- before Cicale was killed and before Basciano was arrested ?

A I am right here, sir.

Q Did you testify yesterday that the order you testified about receiving from Basciano took place before Basciano was arrested?

A The original order, yes, sir.

Q Now, are you familiar with the restaurant in New York City Merchant's Grill or restaurant on about 60th Street,

First Avenue.
A Yes, sir, I am.
Q Showing you what's been previously introduced into evidence as is Defendant's Exhibit VB-E, do you recognize the location depicted in that photograph?
A Yes, sir, I do.
Q And what is that?
A That's a restaurant of Merchant's.
Q Were you ever there with Giuseppe Gambina?
A Yes, sir I was.
Q Were you ever there with Ace Aiello?
A Yes, sir, I was.
Q You were actually there with Giuseppe Gambina and Ace Aiello at the same time; is that correct?
A Yes, sir, that's correct.
Q And you met them at the bar?
A Not exactly sure where we met or if we walked in together.
Q And that was within a day or two after Vinny Basciano was arrested; is that correct?
A That I'm not sure of.
Q Is it accurate to say that about a week before Thanksgiving and after Mr. Basciano was arrested you met Ace Aiello and Joey Gambina at the Merchant's restaurant?
A Again, I'm not sure.

Q Is it accurate to say that within a day meeting Ace and Gambina at that restaurant you went to Atlantic City?
A I don't know the timeframe you are talking about, sir.
Q November 21st, November 22nd, 2004? .
A That's possible, yes, sir.
Q And isn't it true that you went to Atlantic City to create an alibi for yourself will with respect to the murder of Randy Pizzolo?
A The time I went to Atlantic City I actually went with Randy Pizzolo.
Q How many times have you been to Atlantic City? More than once I take it?
A Throughout my lifetime, yes, sir.
Q After the Vincent Basciano was arrested did you go to Atlantic City with Randy Pizzolo?
A I don't know if it was after, but I no one time I did go with Randy Pizzolo, and there was some other gentleman with us also.
Q After Vincent Basciano was arrested approximately one week before Thanksgiving, did you go to Atlantic City as part of an alibi for the expected murder of Randy Pizzolo?
A No, sir, I did not, not for any expected murder of Randy Pizzolo.
Q Did you ask at this restaurant Ace Aiello to explain to Gambina that Randy had to be killed?

A No, sir, I don't recall that.
Q Was there ever a conversation at Merchant's restaurant to your knowledge between Aiello and Gambina about the perspective murder of Randy Pizzolo?
A Sir, I would not talk about murder in a restaurant with anybody.
Q Is it accurate to say that the first time you ever had Ace discuss a murder of Randy Pizzolo was after Basciano was arrested?
A No, sir, that's incorrect.
Q Is it accurate to say that you didn't find out that Ace Aiello was backing out or wouldn't do it until after you got back from the Atlantic City?
THE COURT: I'm sorry. That Ace Aiello was backing out.
MR. GOLTZER: I misspoke.
Q In November 2004, less than a week before Thanksgiving, did you summon Gambina and Aiello to the Merchant's restaurant?
A I don't recall.
Q Do you recall asking them to meet you there after Vinny Basciano was arrested.
A No, sir, I don't recall.
Q Do you recall after Vinny Basciano was arrested discussing within the confines of the restaurant Randy Pizzolo

with Ace Aiello?
A I don't recall, sir.
Q Do you recall discussing with Ace Aiello in the close presence of Joey Gambina how to dispose of Randy Pizzolo's body?
THE COURT: When?
Q After Vincent Basciano was arrested at the Merchant's restaurant.
A I never discussed anything at Merchant's restaurant pertaining to a murder.
Q After Vincent Basciano was arrested did you discuss with Ace Aiello how to dispose of Randy Pizzolo's body?
A No, sir.
Q You never discussed with Ace Aiello after Vincent Basciano was arrested whether the body should be left in the street or burned?
MS. ARGENTIERI: Objection.
THE COURT: You may answer.
A I discussed with Ace Aiello that the body should be left in the street. That was it.
Q Did you beep -- after Vincent Basciano was arrested did you beep Giuseppe Gambina to meet you someplace?
A I beeped a lot of people. I had a big crew after Vinny Basciano was arrested.
Q Did you beep Gambina to talk to him about the reasons he

was not going to kill Randy Pizzolo?
A That was after Anthony Ace Aiello had discussed with him. That's after Michael Mancuso gave the order -- when Michael Mancuso reiterated for me to kill Randy Pizzolo and Anthony Ace Aiello came back to me telling me that Joey Gambina wanted no more part of it, then I had Anthony Ace Aiello bring him to me.
Q You said that -- did you hear Gambina say to you in the presence of Ace Aiello I know I'm putting a bullet in my mouth?
A No, sir, he did not say that.
Q Did anybody use the phrase "I know I'm putting a bullet in my mouth or bullet in my head?
A I don't recall that.
Q Did anybody talk to you about the possibility that Joey Gambina could die for not taking part in the plan to kill Randy Pizzolo?
A After Joey Gambina was admitted that he was not going to be a participant in the murder of Randy Pizzolo I told Ace we're killing Joey Gambina.
Q Was Joey Gambina there when you said it?
A No, sir, he was not.
Q Were you ever in a car with Joe Gambina after Vinny Basciano was arrested and refused to take part where you sat behind Joey Gambina and said it would be really easy to

kill you, making a hand motion with a gun?
A No, sir, never.
Q It never happened?
A No, sir, it never happened.
Q And it never happened that you did that and Joey Gambina swerved the car?
A No, sir. It never happened.
Q Did you ask Joey Gambina to commit another piece of work for you after he refused to take part in the murder of Randy Pizzolo?
A No, sir, I did not.
Q That never happened?
A No, sir, it didn't.
Q Did you tell Joey Gambina after he decided that he wasn't going to kill Randy Pizzolo that everybody deserved a second chance?
A I don't recall saying that.
Q Did you tell Joey Gambina after Mr. Basciano was arrested and after Michael gave the order tell Ace to use the second plan, the alternate plan?
MS. ARGENTIERI: Objection; misstates his testimony.
THE COURT: Sustained.
Q Did you ever tell Ace Aiello -- did you ever ask Gambina to send a motion to Ace Aiello to tell Ace Aiello to use the other plan?

A No, sir. I don't recall.
Q Was there another plan? Will.
MS. ARGENTIERI: Objection as to time frame.
Q After Vincent Basciano was arrested and after Michael gave you an order was there another plan on how to kill Randy Pizzolo?
MS. ARGENTIERI: Objection; misstates the testimony.
THE COURT: Sustained.
Q Was there -- you had -- the plan to have Mr. Bonelli killed was your idea?
A Yes, sir. I formulated that idea and Vinny Basciano accepted it and agreed with me it was a good idea.
Q Did I ask you about Vinny Basciano agreeing with you just now?
MS. ARGENTIERI: Objection.
THE COURT: Don't answer. Sustained.
Q The question to you, sir, is whether you formulated that plan?
A With Vinny Basciano, yes, sir.
Q The question to you, sir, is whether the idea first came out of your mouth?
A The idea originated from myself. That's correct.
MR. GOLTZER: Thank you.
Q There came a point after Vincent Basciano was arrested when you decided that you weren't going to use that plan,

correct?

MS. ARGENTIERI: Objection as to "that plan."

THE COURT: Sustained.

Q Originally your plan was to have Randy kill Bonelli, correct?

A Yes, sir, that's correct.

Q And then to have somebody else kill Randy?

A Joey Gambina to shoot Randy, that's correct.

Q After you learned that Joey Gambina wasn't going to be involved you had to do something else to kill Randy, correct?

A No, sir.

Q Were you still going to have Joey Gambina kill Randy?

A After I was ordered by Michael Mancuso to kill Randy I didn't want to kill Joe Bonelli, so I took that off the table. If Michael Mancuso were to order me also to take care of that thing with Randy and Joe Bonelli Joe Bonelli would have been killed also then.

Q So after the it was decided that Joe Bonelli wasn't going to die there was another plan formulated to kill Pizzolo, right?

MS. ARGENTIERI: Objection to there was a plan to killing that guy.

THE COURT: Wait. You may answer. Do you know the question?

THE WITNESS: Could you repeat it, please.

MR. GOLTZER: May we have it read back?

THE COURT: Yes. Read back the question.

(Record read)

A That's correct.

Q What was that plan?

A To change things around because Joey Gambina didn't want any participation in the murder of Randy Pizzolo at that point in time.

Q How did you change it around -- the plan?

A Anthony Ace Aiello would be the shooter.

Q Is it accurate to say that Vinny Basciano had no involvement in the planning of this murder?

A No, that's not accurate.

Q Referring to 3500 DC 84C page 6137?

THE COURT: Go ahead.

MS. ARGENTIERI: I am going to object. There's no timeframe as to his question.

MR. GOLTZER: Binning at line 12.

THE COURT: Let me take a look. You may ask the question.

MR. GOLTZER: Thank you.

Q Did you give the following answer to the following question under oath, Mr. Cicale, at a prior trial line 12:

Question: Vinny Basciano had no involvement in the planning of this murder, correct?

Answer: Had no involvement in the planning but he gave the order.

Was that your answer to a question under oath, sir, at a prior trial?

A If that's what it says, yes, it was, sir.

MR. GOLTZER: May I have a stipulation the transcript was rad accurately, Judge.

THE COURT: Very well.

MR. GOLTZER: Thank you.

Q After Basciano was arrested who was the highest level member of the Bonanno Crime Family on the street?

A At what time are we talking about? Right after Basciano arrested or later on?

Q Right after Basciano was arrested who was the highest member of the family on the street?

A After right -- immediately after Vinny Basciano was arrested Michael Mancuso was the highest ranking member of the Bonanno Crime Family.

Q Can you tell the jury the date upon which you became the acting boss of the Bonanno-Massino Crime Family?

A It was when Vinny Basciano -- I can't no, I can't give you an exact date, no, sir.

Q Can you give me a year?

A It was either at the end of 2004 or the beginning of 2005.

Q Were you appointed the acting boss by Joseph Massino?
A Actually, I was instructed by Vinny Basciano and Joseph Massino that Michael Mancuso didn't accept the massages and act on the messages, I was to follow their instructions, and move forward by acting on their messages, so that would put me as an acting boss at that period.
Q So is it your understanding, sir, that Joseph Massino appointed you the acting boss of his crime family?
MS. ARGENTIERI: Objection to characterization.
Q In December and January 2004, 2005 --
THE COURT: Sustained.
Q How did you get the message that you were the acting boss?
MS. ARGENTIERI: Objection to the characterization of the message.
THE COURT: You may answer.
A I received all messages coming from Vincent Basciano and Vincent Basciano on numerous occasions would send messages back who were these messages coming from, and the response I would get it's coming from Vinny and Joe, that they're together.
Q So you were getting messages from Vincent Basciano. Actually, who delivered the messages that you thought were from Basciano and Mr. Massino?
MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Who delivered messages to you physically or verbally in December- January 2004 or 5?

A I received messages from Vincent Basciano, Jr, from Angelo Basciano and from Tommy Lee, all coming from Vinny Basciano Senior.

Q And the messages from Tommy Lee, did Tommy Lee tell you that Joe Massino wanted you to take the reins of the family?

A No, sir. That was never said.

Q Did anybody tell you that Joe Massino wanted you to take the reins of the family?

A Those exact words, no, sir.

Q Did anybody tell you by way of a message that Joe Massino wanted you to be the acting boss of the family?

A Not these exact words were not used.

Q Did anybody tell you that Joe Massino wanted you to be on the acting administration of the family in those words?

A No, sir in those words, that was never said.

Q At the time December 2005 you understood that Joseph Massino was still the official boss of the family?

A Yes, sir, that's correct.

Q You understood at that time that only the official boss of the family could appoint someone to in an administration position?

A No, sir, that's incorrect.

Q Did you understand that only an official boss could appoint an acting boss?
A Vinny Basciano was in control at that time of the Bonanno Crime Family.
Q Now, Vincent Basciano's sending messages that he was getting Joe Massino's okay to do things; isn't that correct?
A No, that's incorrect the way your statement, sir.
Q How were you getting messages from Vinny Basciano and Joe Massino at the same time?
A Every message came from Vinny Basciano. I didn't know Joe Massino. I never met Joe Massino. Every message was coming from Vinny Basciano stating I'm with Joe, we're together, and here's the decisions we are making.
Q Every message had that preamble to it?
A Not every single message but I would -- sometimes the message with Louie Electric, the message would switch the captains to the different crews. I would ask and I asked where are they coming from. Is Joe aware of this and the response was Vinny said that Joe was aware of everything, that Vinny's with Joe.
Q So the messages you were receiving from Vincent Basciano led your to understanding that Joseph Massino was in control of the family?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.

Q Didn't it?

Was it your understanding from the messages you received from Mr. Basciano that Joe Massino was still in control of the family?

A If Joe Massino was still in control of the family at that time he had many other avenues to send messages out to other people, so it was Vinny Basciano who had control of the crime family at that time because Michael Mancuso and myself were the only two people that was the administration of the crime family.

Q So isn't your testimony that the absence of the specific message from Joseph Massino to you led to your understanding that Vincent Basciano had taken over the Massino Crime Family?

MS. ARGENTIERI: Objection.

THE COURT: You may answer the question.

THE WITNESS: Would you repeat the question, please.

MR. GOLTZER: May we have it read back?

THE COURT: Sure.

(Read record).

A It was my understanding that Vinny and Joe were controlling the crime family.

Q The question to you, sir, is whether the absence of a message from Joseph Massino led to your understanding that Vincent Basciano had taken over the Massino Crime Family?

A Again, it was my understanding that Vinny Basciano and

Joe Massino were together and the messages were coming from the two individuals at MDC Brooklyn.

Q So was it your understanding that Vincent Basciano was letting you know that Joe Massino what was in control?

A It was my understanding that Vinny Basciano was with Joe Massino and my loyalty was with Vinny Basciano.

Q Your loyalty had to be with Joe Massino, correct?

A I didn't know Joe Massino.

Q You took an oath when you were inducted to have absolute loyalty to the actual boss of the family, right?

A Yes, sir, I did.

Q You took an oath to kill on the orders of the official boss of the family, correct?

A Yes, sir, it is. If asked, yes.

Q And if asked by the official boss of the family you would have put a bullet in Vinny Basciano's head, correct?

MS. ARGENTIERI: Objection.

THE COURT: You may answer.

A No, sir.

Q At the risk of your own life you would have disobeyed the order?

A I cared for Vinny Basciano that much and I was so close to him I would never do that.

Q You cared for Randy Pizzolo, too, didn't you?

MS. ARGENTIERI: Objection.

A No as much as Vinny Basciano.
Q In fact, when you were at his wake you felt terrible?
A I felt ashamed.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You felt ashamed as you testified yesterday, didn't you?
A Yes, sir. That's correct.
Q Was that why when you were on your way to the wake you bumped into Joe Gambina you said you had to go the shit head's funeral?
A That's lie. That's incorrect.
Q Never happened?
A That's correct. That's correct. It never happened.
Q There was a meeting of the captains before Vinny Basciano was arrested; is that correct?
A Yes, sir, that's correct.
Q And you were present at the meeting of captains; is that correct?
A Yes, sir, that's also correct.
Q And Vinny Basciano spoke at the meeting of captains; is that correct?
A Yes, sir, that's correct.
Q And did Vinny Basciano say at the meeting of the captains I'm here for Joe?
A Vinny did make that statement, yes, sir.

Q You understood that statement to mean that he was loyal to Joe Massino for better or worse, right?
A That's statement meant that he's there for Joe, yes, sir, that's correct.
Q He let every captain in the family know that he was there for Joe, correct?
A Yes, sir, that's correct.
Q And when he was in jail he was sending you messages letting you know he was with Joe, correct?
A Vinny Basciano was letting me know that him and Joe were together and the messages are coming from the two individuals -- Joe Massino and Vinny Basciano.
Q And you were never appointed by either of them as the acting boss of the family?
MS. ARGENTIERI: Objection; asked and answered.
THE COURT: Sustained.
Q Did you see yourself as acting boss of the family?
A Once I received permission to start taking out action and elevating, acting as a boss of a crime family, then that put me in the position of acting boss because I had the responsibility, and I was following Vinny Basciano's instructions.
(Continued on next page)

CONTINUED CROSS-EXAMINATION
BY MR. GOLTZER:
Q Did you let the other captains of the family -- did you let the other families know that you were the acting boss, sir?
A No, sir, I did not.
Q You were talking to the other captains, some of the other captains in the family about Michael Mancuso, weren't you?
MS. ARGENTIERI: Objection. Time frame?
THE COURT: Yes.
Q After Vincent Basciano was arrested.
MS. ARGENTIERI: Time frame.
MR. GOLTZER: Christmas, 2004.
A There was conversation, yes.
Q With who?
A What time, sir?
Q Isn't it true, sir, around Christmas of 2004 you were polling the captains of their views on Michael Mancuso as the acting boss of the family on the street?
A Did you use the word "polling"?
Q Yes.
A No, sir, that's incorrect.
Q Is there another word that would make my question correct about your conversations --
THE COURT: No, you can ask the questions. Don't

ask him to formulate your questions.
Q Did you have conversations with captains in the Massino family about Michael Mancuso around Christmas of 2004?
A I had conversations, captains, acting consigliere of the Bonanno Crime Family pertaining to try to resolve the issue I was having with Michael Mancuso.
Q You were having differences with Michael Mancuso?
A Because Michael Mancuso wasn't accepting the messages.
Q You were having problems with Michael Mancuso?
A Problems were starting to arise, yes, sir.
Q You were afraid Michael Mancuso wants to have you killed?
A At some point -- yes, sir.
Q When were you afraid Michael Mancuso wants to have you killed?
A I'm not sure if it was the end of December of 2004 or some time in January of '05. It's when I started sending Vincent Basciano the message I feel like a sitting duck out here.
Q What made you feel like a sitting duck, Mr. Cicale?
A Letting Vincent Basciano know there's a serious problem going on and I might have to act.
Q But on the street -- I mean nothing Vincent Basciano said made you feel like a sitting duck?
A No, it was Michael Mancuso's actions towards the messages that were coming.

Q What about Michael Mancuso's actions made you feel endangered?
A When Michael Mancuso and myself started arguing. At one point we had a bad argument.
Q When was that?
A Again, I would say some time in December of 2004.
Q When in December of 2004 did you and Michael Mancuso have a bad argument?
A It was some time in December of 2004. I don't know the exact date, sir.
Q Was it the middle of the month, the beginning of the month; do you remember?
A No, sir, I can't be accurate.
Q Was it after Randy Palazzolo's death?
A Yes, it was after Andy Palazzolo's death.
Q Was anybody else present for the argument?
A That one argument, no, sir.
Q Was there more than one argument?
A Well, Michael Mancuso refusing to elevate Louie Electric, was basically a slap in Michael Mancuso's face when I actually called Louie Electric out of the car, elevated him to an official captain based on the information I was sent back from Vincent Basciano that Michael didn't want to act on it as an acting boss, you go ahead and elevate him as an official captain. That places me as the acting boss.

Q You were the acting boss when you elevated Louie Electric to an official captaincy in the presence of Michael Mancuso?
A Every time I was instructed by Vincent Basciano to act on a message and either elevate somebody, straighten somebody out or move guys from a different crew, when I was acting, when I was following those instructions, I had the capacity of an acting boss at that time.
Q Did you tell Michael Mancuso at that time "I'm acting as the acting boss of this borgata."?
A I didn't have to. I told Michael "This is coming from Vinny and Joe. I was told if you don't handle it, I'm going to handle it. From this day forward, Louie Electric is now an official captain of the Bonanno Crime Family." I introduced Louie Electric to Michael. Michael shook his hand. Michael said he would have to check into it. I told Michael it's already done. Michael congratulated Louie Electric and that was it. That's a slap in Michael Mancuso's face, sir.
Q Did you tell Michael Mancuso "I'm only a messenger"?
A In the beginning, yes, because I didn't want this to escalate into a problem. I felt Michael and myself are stronger working together than us fighting.
Q Did you tell Michael Mancuso that you were only a messenger in connection with the bumping up of Louie Electric?
A No, sir, that's incorrect.
MR. GOLTZER: Referring to 3500 Dominic Cicale

84-B, pages 5839 to 5840. It's page 5839, line 24 moving down to 5840, line 14.

THE COURT: Is there an objection?

MS. ARGENTIERI: Objection, Judge. If the testimony is going to be read to him, it should be read from 5839, 24 to 5831 -- there's a temporal --

THE COURT: What point on 5841?

MS. ARGENTIERI: All the way through 5841 line 24.

MR. GOLTZER: If they would give me the page, I'll read whatever they would like, if it's agreeable to the court.

MR. GOLTZER: That's fine. Read it slowly, please.

MR. GOLTZER: Very well, Judge.

THE COURT: Thank you.

Q Were you asked these questions and did you give these answers under oath at a prior trial?

"QUESTION: When Michael Mancuso refused to bump up Louie Electric, what if anything did you do?

"ANSWER: We were going back and forth with that. Michael Mancuso was upset that messages were coming directly to me and not him. He questioned me on where the messages were coming from and I was instructed not to tell anybody. It's not anybody's business so that's what I did. Michael Mancuso was very upset. He said "Messages should be coming directly to me." I said "Michael, what do you want from me? I'm just a messenger right now." So I said "We're out here, we

have to work together. They are our boss." So Michael Mancuso mentioned "Well, it's not up to Vinny. Vinny was only an acting boss. It's up to Joe Massino." I informed him. I asked Tommy Lee who is giving these messages. Tommy Lee informed me that the messages were coming from Vinny Basciano and Joe Massino. So Michael Mancuso said "Well, I want to make sure they are coming from Joe Massino." With that, I got aggravated with him. I says, "You know something, Michael, Vinny Basciano is the one that bumped you up to acting underboss, not Joe Massino." I said, "You know, you should show some loyalty." We just kept on going back and forth with each other periodically.

"QUESTION: Was Louie Electric ever bumped up to captain?" Continuing on page 5841.

"ANSWER: Yes, he was.

"QUESTION: Explain how that happened.

"ANSWER: After a couple of messages went back and forth, I informed Mr. Basciano that Michael Nose was just sending the money messages and no other messages.
Mr. Basciano informed me if he doesn't do it you do it, bump him up yourself. You go around and introduce Louie Electric to official captains and he also told me if I want to straighten out Joey Gambina out, to straightened him out.

"QUESTION: Did you bump up Louie Electric?

"ANSWER: Yes, I did.

"QUESTION: Explain what happened when you bumped up Louie Electric.

"ANSWER: The last conversation I had with Michael Mancuso, I had Louie Electric in the car. I was talking with Michael. I asked -- I gave him one last shot. I said "Michael, you are going to bump this guy up." Michael said "No." I tapped on the car. Louie Electric came out of the car and I introduced Louie Electric as an official captain. I told him "I'm bumping you up on orders from Joe Massino and Vincent Basciano to official captain," and I introduced Louie Electric to Michael Mancuso as an official captain. Michael Mancuso shook his hand, said congratulations and then he told Louie Electric that I still got to check on it but it was already done at that time. Is that sufficient?

MS. ARGENTIERI: Yes.

Q Did you give that series of answers to that series of questions under oath at a prior trial?

A Yes, sir, I did.

Q Were they true?

A Yes, sir, they were as accurate as I could be about it; yes, sir.

Q You're still accurate as far as you're concerned?

A Yes, sir, that's correct.

Q Now, in the passages I just read to you, is it fair to say that all of that, two pages, related to one meeting with

Michael Mancuso, you and Louie Electric?

MS. ARGENTIERI: Objection. He can ask --

MR. GOLTZER: If he can answer it.

MS. ARGENTIERI: The testimony is what it is.

THE COURT: The testimony stands for itself, you're correct.

MR. GOLTZER: Does that testimony relate to one meeting, that's my question.

THE COURT: One meeting?

MR. GOLTZER: What is it, or more.

THE COURT: Or more?

MR. GOLTZER: Whatever it is. I just want to know.

THE COURT: Sustained, ambiguous.

Q Was it at the interaction between you and Mancuso where you said "I'm just a messenger," was that the same time you actually bumped up Louie Electric?

A No, sir, it wasn't.

Q How long afterwards did you actually bump up Louie Electric?

A I don't know how long afterwards, but as everybody heard in the courtroom, what you read, the time when I got out of the vehicle to tell Michael about the message to bump up Louie Electric was a totally different conversation than the one you're talking about.

Q Was it on the same day?

A No, sir, it was not.
Q When was the conversation when you told Michael Mancuso "I'm just a messenger"?
A That was in the beginning when Michael first started not accepting the messages. I was just trying to humble myself because I know how I could get and I really didn't want to argue with Michael. I wasn't looking to disappoint Vincent Basciano. I was trying to keep the peace and like I said before, I felt me and Michael together were stronger than us dividing and arguing with one another, especially letting all the other guys in the Bonanno Crime Family see this. We were the only two guys who were from the same neighborhood.
Q You want to keep the peace?
A Originally I tried; yes, sir.
Q When you originally tried to keep the peace, did it occur to you or did you tell Michael Mancuso why don't you send in a message to Joe and find out if you're supposed to accept messages you get from him? Did you do that?
MS. ARGENTIERI: Objection, compound.
THE COURT: Sustained.
Q Did you tell Michael why don't you send a message to Joe about this problem?
A At one point I did tell Michael check for yourself. You could verify. You could do that very easily. You have the ways and means to do so but obviously Michael chose not to.

Q You knew that Michael had ways of choosing to verify information with Joe, right?
A Could you repeat that question, please?
Q Did you know that Michael had ways of getting messages to Joe Massino?
A It's organized crime. We have ways of doing everything.
Q Was it your belief Michael Mancuso could, if he wished, get a message to Joe Massino?
A Anybody in the Bonanno Crime Family could get a message directly to Joe Massino if they needed to, want to.
Q How would they do that?
A Through attorneys, through wives, through other individuals, to whoever is on the visiting list, through investigators.
Q In an effort to keep the peace, you told Michael why don't you check with Joe?
A I mentioned to Michael that he should verify everything I'm telling him with Joe Massino, that Vincent Basciano and Joe Massino are together, all the messages are coming from the two individuals.
Q Did you ever get word from Michael Mancuso that he had received such a message directly from Joseph Massino?
A Michael didn't make me aware he checked in for any message or inquired of Vinny or Joe, didn't tell me anything about that.

Q Did you ask him?
A I didn't have to ask him by the way he was acting.
Q The answer is you didn't ask him?
MS. ARGENTIERI: Objection.
THE COURT: You may answer.
A I didn't ask him if he received the message or inquired?
Q Either.
A No, sir, I did not ask him.
Q You knew from the way he was acting that you didn't have to ask him?
A That's correct, sir.
Q How was it he was acting that let you know that?
A Michael Nose wasn't accepting the messages, being defiant and if Michael Nose had sent him a message to ask what's going on, he would have received a message coming back stating all the messages are going through Dominick and it's just supposed to be a need-to-know basis, just accept the messages, follow them through, you and Dominick stay together. The only message that Michael Nose, I'm sure he received, was the handwritten letter that Vincent Basciano sent out through Tommy Lee. Tommy Lee gave the letter to me. I read it and I forwarded it to Michael Nose. I watched Michael Nose read the letter, Michael Nose acknowledged he recognized Vincent Basciano's writing. Michael Nose took the letter after our conversation and left with it.

Q Had he been defiant of you before he received that letter from Vincent Basciano?
A He was defiant before and after reading the letter.
Q Tell us once again. What did that letter say, the one from Vincent Basciano?
A The letter basically stated for Michael and myself to stay close, for Michael to listen to me, to the messages that were coming out, for us to get along, for Michael to take things slowly, that Vinny and Joe were together and just for me and Michael to get along and there was also messages in there about monies on what Michael should collect from unions, some other people.
Q There was nothing in that message to Michael Mancuso indicating there should be any violence between the two of you, was there?
A Yes, Vincent Basciano stated for me and Michael to get along, work things out, take things slowly.
Q That means there was supposed to be violence?
A Vincent Basciano, that's when I started sending word I feel like a sitting duck. So Vinny is aware there's trouble, trouble is brewing between me and Michael. Basically, he's telling Michael calm down, work things out with you and Dominick and take things slowly, slow up.
Q The message, the letter to Mancuso from Vincent Basciano to calm down, slow down, take things slowly made you feel more

threatened?

MS. ARGENTIERI: Objection.

Q Is that it?

THE COURT: Sustained.

Q Did you feel threatened by Michael Mancuso as you were reading the letter from Vincent Basciano?

A I recall no, to the best of my recollection, not at that point.

Q Did you feel threatened by Michael Mancuso before you read the letter?

A There was always an element of threat when there's dissension between two people, especially in organized crime. Things happen. When somebody is going to get killed, you don't know about it. They don't tell you you're getting killed today. Everything is about deception in that life.

Q Did you just say everything is about deception in that life?

A Not everything but when somebody is getting killed, you try to be deceptive with them to lure them into places, to kill them. When Michael and I started not getting along, having disagreements about these messages that were coming out, Michael didn't want to act, of course there's dissension building up. Your antenna has to go up. Otherwise you're not going to last in that life.

Q Your antenna went up when?

A When Michael Mancuso and I first started going back and forth about these messages, refusing to let Michael Mancuso know who is giving me these messages.
Q How early in December did your antenna go up, as you said?
MS. ARGENTIERI: Objection, asked and answered.
THE COURT: Yes, you may answer.
A At this point in time, after all these years, I can't pinpoint exactly when.
Q When your antenna first went up, did you feel that Michael was a threat to you?
A To recall how I felt at that point in time, I wouldn't be accurate, but you know, I was aware there's a situation starting to brew now between me and Michael. Instead of getting along, we're not getting along. There's actually dissension being created because Michael made it a point I'm doing as I'm told from messages coming from Vinny and Joe Massino, I'm doing as I was instructed.
Q You understood at the time the dissension began that Michael Mancuso was still the acting boss on the street, right?
A I understood Michael had the last word on the street. Vincent Basciano never told Michael Mancuso you're going to be the acting boss. He was acting underboss. I was an official captain and we were supposed to follow, you know, whatever

messages are coming out from our boss who is Joe Massino. At that time the messages were coming through Vincent Basciano who was our acting boss.

Q Vincent Basciano told you that Michael was to have the last word on the street?

A Yes, sir, I was to back him and if Michael had any problems with anybody, that I was to handle it.

Q Vincent Basciano told you before he was arrested "Anything happens to me, you and Michael stay together"?

A Yes, sir, stay close together.

Q Vincent Basciano told you before he was arrested "Michael is to have the last word on the street"?

A Yes, sir, that's correct.

Q Before he was arrested, Vincent Basciano didn't tell you to try to take over the family, did he?

A I never tried to take over the family, sir.

Q Vincent Basciano didn't tell you to try to take over as an acting boss?

A Vincent Basciano instructed me to act to take the authority of an acting boss and follow his instructions.

Q Were those his words?

A Not so many words by telling me Michael don't accept the messages, Michael don't act on the message, you do it. That's acting as an acting boss.

Q The message you got to that effect was under the

authority of the official boss, Joe Massino?
A Under the authority of Vinny Basciano and Joe Massino.
Q Vincent Basciano, prior to the time he was arrested, never said anything to you reflecting disloyalty to Joseph Massino, did he?
A I don't know what you're talking about, sir.
Q Is it the word "loyalty" that confuses you?
THE COURT: Ask a question.
Q Did Vincent Basciano say anything to you before he was arrested showing that he was disloyal to Joseph Massino?
A No, Vincent Basciano was loyal to Joseph Massino.
Q After Vincent Basciano was arrested, did he send you any message at all showing disloyalty to Joseph Massino?
MS. ARGENTIERI: Objection, relevance.
THE COURT: You may answer.
A It wasn't to my knowledge; no, sir.
Q Did you think about -- withdrawn.
You indicated before that you had discussions about Michael Mancuso with some people after Vinny was arrested?
MS. ARGENTIERI: Objection, vague.
THE COURT: Sustained.
Q Did you say you had discussions with some captains after Vinny was arrested about Mancuso?
A Pertaining to?
Q Mancuso.

A About the problem I was having with Michael Mancuso, yes.
Q Did you talk to Alfred Altadonna about that?
A Is that the same Alfred running the restaurant with Joseph Massino?
Q Yes, the gentleman who ran Casa Blanca for Joe. Did you talk to Alfred about that?
A Yes, I did.
Q What did you say to Alfred about Mike Mancuso?
A I informed Alfred what was going on because knew Alfred was close to Joseph Massino.
Q Did you ever tell Alfred that you felt threatened by Michael Mancuso?
A This is a different time period you're talking about, jumping all over the place now, sir.
Q Well, the word "ever" means ever, right?
THE COURT: Sustained.
Q When did you talk -- let's focus on the period after Vinny was arrested, okay?
A Yes, sir.
Q You had a conversation about with Michael about Alfred?
A Yes, sir; that's correct.
Q After Vinny was arrested, correct?
A Yes, sir; that's correct.
Q You want to impart information to Alfred; is that correct?

A I want to relay -- I want to see what Alfred thought, you know, get his opinion on the situation that was occurring, what had occurred.
Q You knew at that time that Alfred was close to Joseph Massino?
A Yes, sir.
Q Was it your hope or expectation that Alfred would communicate to Joseph Massino your feelings?
A No, it was my hope I would get -- it was my hope I would have somebody else loyal to me and get my back in.
Q Who did you want to be loyal to you, Alfred?
A Well, if I had Alfred and Alfred agreed what I was saying and seeing I was trying to resolve an issue that was occurring with Michael, Michael was being stubborn, looked like Michael wanted to take full control and do things on his own, I felt Alfred, one of the people in the organized crime family, should be aware of it because it was getting on grounds that I could wind up dead here because what was going on. It was getting serious at that point in time when I did have the conversation with Alfred. I was trying to have some type of resolution to resolve this before it actually turned to me killing Michael.
Q Can you tell the jury to the best of your recollection as much of the actual words that were exchanged between you and Alfred during this conversation?

A Sir, that was a long time ago. To come up with accurate words, that would be hard other than hello, good to see you. It's difficult but what I just stated was basically the gist of our conversation.
Q That was the substance of your conversation with Alfred?
A Yes, pertaining I had an issue with Michael Mancuso.
Q Did you tell Alfred that Michael was disrespectful to you?
A Could you repeat that, please?
Q Did you tell Alfred Michael was being disrespectful?
A Again, I didn't hear you. The gentleman was coughing.
Q Did you tell Alfred that Michael was being disrespectful to you?
A No, I told Alfred that to the best of my recollection, Michael wasn't accepting the messages and the messages are coming from Vinny and Joe. Have you heard anything from Joe? Alfred said no and we just went over everything about what was going on because I was asking him also for some advice because, again, I wasn't looking to start a war within the crime family.
Q While you weren't looking to start a war, were you letting Alfred know the problems could lead to a war in the crime family?
A I didn't have to -- Alfred is an old timer. I didn't have to let him know specifically there's going to be a war.

Alfred understood what's going on. Alfred did inform me "Don't worry, you're doing the right thing. If the messages are coming from Vinny and Joe, not to say who the messages are coming from, then you don't say anything. You listen to what Vinny and Joe are telling you. Listen to the messages. Don't listen to anybody else." That's what I did.

Q After the conversation with Alfred that you've described to the jury, it was your understanding that Alfred knew exactly what you were talking about?

MS. ARGENTIERI: Objection to what Alfred knew.

THE COURT: Sustained.

Q You described Alfred as an old timer?

A Yes, sir; that's correct.

Q Were you trying to speak to Alfred in the jargon of the Mafia?

A I was trying to articulate to Alfred there could be a problem, situation and Alfred knew what I was talking about.

Q By problem, situation, problem meant violence?

A Problem doesn't mean violence. It could lead to violence.

Q Situation means it could lead to violence?

A That could be correct.

Q So, you were letting Alfred know that the situation or the problem could lead to a war?

A Could lead to a war but actually me killing Michael and I

didn't want to kill Michael to the point I was trying to resolve it before it came to that point.

Q Did you let Alfred know that you were thinking about killing Michael?

A I didn't even let Louie Electric know that I want to kill Michael because I was closest to Louie Electric.

Q Was Louie Electric somebody who -- Louie Electric was a captain. You bumped him up?

A On Vincent Basciano and Joe Massino's orders, Louie Electric was bumped up to an official captain. That's what I was instructed to do.

Q You were only following orders?

A Of course; yes, sir. I was only following my orders from Vincent Basciano.

Q You would never do anything on your own involved with the Mafia?

A I never said that, sir. At that point in time I was following Vincent Basciano's orders and I bumped up Louie Electric from an acting captain to an official captain.

Q Louie Electric was your ally?

A He was my close friends and ally, yes, sir, at that time.

Q P.J. Pisciotti, was he a close friend and ally as well?

A P.J. Pisciotti was my acting captain.

Q Somebody you selected to be your acting captain?

A I selected him but also I had a conversation with Vincent

Basciano about it and Vincent Basciano gave his approval to bump up P.J. Pisciotti also.

Q P.J. Pisciotti was the person you enlisted to kill Mike Mancuso?

MS. ARGENTIERI: Objection to the term "enlisted."

THE COURT: Sustained.

Q Asked to kill Michael Mancuso.

A I asked P.J. Pisciotti for help; that we need help and P.J. was going to be part of the individuals that were going to be involved to kill Michael Mancuso.

Q Did you ask Louie Electric for his loyalty and support in what could be an upcoming situation?

A I had many conversations with Louie Electric and during these conversations, a lot of innuendos were passed. There was no direct talk like "I'm killing Michael," but everything I was insinuating, Louie read between the lines. Louie told me sometimes, Dom -- at that time I wasn't getting -- I was sending the messages to Vinny about I feel like a sitting duck. The messages were coming back, relax, take things slowly. You're paranoid.

As it started escalating, with myself and Michael, I brought it to Louie Electric's attention. He was aware of everything and Louie stated to me, You know, Dom, sometimes you just have to act. You can't wait because Vinny is not out here. My thing to Louie was I don't want to disappoint him.

I had such a relationship with him, we were so close, I would never look to disappoint Vinny. That's why I was waiting until Vinny would finally give me the okay.

Q Was there -- by okay you mean permission?

A You didn't let me finish, make me --

Q I'm not making you do anything.

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Did you finish your answer?

THE WITNESS: Not really.

THE COURT: Finish it.

A I was trying to explain to Louie Electric I don't want to disappoint Vinny and Louie told me sometimes you got to act. He's in jail, you know. He doesn't know the magnitude of what's going on out here. So, I said -- I made a decision, you know what, I'm going to wait. I'm not going to act on my own. I'll wait for his instructions and I'll follow them. Whatever happens happens. Shortly thereafter, that's when I finally received the message from Vinny if you feel like -- don't feel like a sitting duck. Do what you have to do if it comes down to it.

Q Did you remember, was there a captain by the name of Jerry Asaro?

A Yes, there was.

Q Was Jerry Asaro about somebody whom you spoke about

Michael Mancuso as well?
A If I recall correctly, it was the evening before I was arrested I had a conversation with Jerry Asaro.
Q What conversation did you with Jerry Asaro before you were arrested?
A I informed Jerry Asaro there was an issue with myself and Michael Mancuso and, again, I went over everything that was going on to Jerry Asaro to see if he had any input.
Q How many captains were there at the time that you were talking to Jerry Asaro and Alfred and Louie Electric about the situation?
A There may have been about eight captains in the crime family, around, about, to the best of my recollection.
Q You were one of them?
A Yes, sir; that's correct.
Q Louie Electric was one of them?
A Yes, sir, that's also correct.
Q Jerry Asaro was one of them?
A Yes, sir; that's correct.
Q And had you spoken to anybody else about the situation with Michael who was a captain?
A Yes, sir, I did.
Q Who?
A I spoke with Nicky Santoro and Anthony Aiello who is the acting consigliere of the Bonanno Crime Family at that time.

Q Let's count up the captains you were talking to. You spoke to Nicky Santoro; is that right?
A Yes, sir; that's correct.
Q You spoke to number two, Jerry Asaro?
A Yes, sir; that's correct.
Q You spoke to number three, Louie Electric?
A Yes, sir; that's correct.
Q You were number four?
A I was a captain; that's correct.
Q Who is the fifth captain? You spoke to somebody else? Slipped my mind.
A Anthony Rabito we're talking about.
Q Including yourself, there were five of the eight captains of the Massino family --
MR. GOLTZER: You're going to object. Go ahead.
MS. ARGENTIERI: Objection, the testimony --
MR. GOLTZER: I'll redo it.
THE COURT: Five is all together.
MR. GOLTZER: Including him.
THE COURT: Okay. He didn't speak to himself.
MR. GOLTZER: I don't know about that -- I'll withdraw that. I apologize.
THE COURT: There's nothing funny about it.

MR. GOLTZER: May I ask the next question?

THE COURT: If you're respectful to the court. Otherwise sit down.

MR. GOLTZER: I meant no disrespect.

THE COURT: Go ahead.

Q There were eight captains in the family?

A I said approximately to the best of my recollection; yes, sir.

Q You spoke to four of them about the situation?

A Its to different degrees because I had different comfort levels with each individual.

Q Including yourself, a majority of the captains in the Massino family were involved in discussions about the situation with Michael Mancuso; is that correct?

MS. ARGENTIERI: Objection, misstates the testimony.

THE COURT: Sustained.

Q Did you want the loyalty of the four captains with whom you were speaking?

MS. ARGENTIERI: Objection.

THE COURT: You may answer.

A Like I just stated, it was at different degrees of conversation I had with each individual because some people I trusted, some I didn't.

Q Who didn't you trust?

A I didn't trust Nicky Santoro or Anthony Rabito. I felt

they were closer to Michael.
Q Who did you think was closer to you?
A Louie Electric and Anthony "Ace" Aiello. I was the closest to Louie Electric.
Q Who else did you feel would be loyal to you in case of a war?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Who else did you think might be loyal to you in a situation --
MS. ARGENTIERI: Objection, speculation.
THE COURT: Sustained.
Q Were there factions that were developing within the family?
MS. ARGENTIERI: Objection, time period.
Q While you were having these discussions with captains?
THE COURT: Go ahead.
A No, sir, not that I'm aware of.
Q You didn't see a faction supporting you?
A I saw Louie Electric giving me advice. He would be there for me if trouble arose but I had the most powerful crew in the Bonanno Crime Family. It was Vincent Basciano's old crew. I wasn't worried if a war broke out. I had plenty of shooters in my crew that were capable of violence.
Q So, it was your view that you could win a war?

A It was my view I had the most powerful crew in the Bonanno Crime Family. I inherited Vincent Basciano's crew who had all the power and all the money in that crime family -- the majority.

Q Upon your inheritance of Vinny's powerful violent group of killers, they became yours, right?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did you have any power within the Bonanno Crime Family after Vinny went to jail?

A Obviously if I was elevating people to official captains and everybody was accepting it, because I had the support of Vinny Basciano and Joseph Massino.

Q Did you want more power in the Bonanno Family after Vinny went to jail?

A I didn't want anything, really.

Q So, you were not interested in pursuing wealth at this time?

A I had legitimate wealth. I didn't need it. I was so close with Vincent Basciano, I wasn't going to disappoint him in any way, shape or form.

Q So, everything you did with respect to Michael Mancuso was for Vinny?

A What do you mean by everything I did for Michael Mancuso?

Q When you stood up to Michael Mancuso, that was for Vinny?

MS. ARGENTIERI: Objection, misstates the testimony.

THE COURT: Sustained.

Q Is it true that whenever you were speaking to other captains about the situation, you weren't doing it for you?

A I know when I felt uncomfortable, like when I spoke to Anthony Rabito, Nicky Santoro and Jerry Asaro, I made sure I stated I'm only doing what I'm told from Vincent Basciano and Joseph Massino. They're sending me messages, both in there together. I was letting basically everybody know if you want, check for yourselves, send messages in and find out. I was sure, a thousand percent sure at that time if they sent a message in, the message would come back out was sending messages through Dominick. If Michael doesn't act on the messages, Dominick is instructed to act on our behalf.

Q You've already told us this situation could lead to a war.

MS. ARGENTIERI: Objection, misstates the testimony.

THE COURT: Sustained.

Q Could this situation have led to a war?

A Anything is possible, sir.

Q People could die that way, as you knew?

A It's organized crime. That's what happens, sir.

Q This problem had nothing to do with you?

MS. ARGENTIERI: Objection, vague.

THE COURT: Sustained.

Q With respect to this problem, was there anything you were hoping to get out of it?

MS. ARGENTIERI: Objection, vague.

THE COURT: Sustained.

Q With respect to your efforts in carrying messages, were you expecting to get anything out of it?

A I was expecting to resolve an issue and as far as -- there was a time I had a conversation with Michael, Christmas money. We had over $300,000 in Christmas money. I gave Joseph Massino what Vincent Basciano instructed me to give. I gave everything else to Vincent Basciano, even monies I collected for myself and Louie Electric told me, he said "Dom, you know you're supposed to take your end." I said "No, leave it to them guys. It's Christmastime, leave it to their families." I didn't need money. I didn't need the headaches.

Q Did you tell Ace Aiello in the presence of Joey Gambina to strap up for the coming war?

A No, sir, that's incorrect.

Q Never happened?

A Those aren't my words, sir.

Q What are your words?

A Number one, I wouldn't have a conversation in front of Joey Gambina after he did not participate in the Pizzolo

murders. That conversation never happened, sir.
Q Did you ever have a conversation to that effect outside the presence of Joey Gambina with Ace Aiello?
A No, sir, I did not.
Q Did you tell anybody in your crew "get ready"?
A I might have told P.J. Pisciotti to be ready; that I had the okay from Vinny to kill Michael Mancuso.
Q Did you tell anybody else in the crew "get ready"?
A Anthony Aiello. I don't know if I told him or a message -- he was there at a drop of a dime.
Q Did it occur for you to have a sit-down with the acting consigliere to try to settle the problems between you and Michael Mancuso?
A Actually, it wasn't a sit-down. We went out for Christmas dinner.
Q Didn't work out, though, did it?
A What didn't work out?
Q Was that a peace meeting?
A No, it was Christmas dinner, getting together and I had to transfer some guys from Louie Electric's crew to Nicky Santoro's crew.
Q Were you circulating to the captains in the Bonanno Crime Family just basically to see how they felt about Michael?
MS. ARGENTIERI: Objection, asked and answered.
THE COURT: Sustained.

Q Were you asking the captains in the family if they were getting bad vibes from Michael?
A I don't recall that.
Q Were you asked these questions, did you give these answers, referring to Government Exhibit 3500-84 B, pages 5845 to 5846?
THE COURT: Which lines?
MR. GOLTZER: Starting at line 16 for context, your Honor, on page 5845 and ending at line 25, sir, unless the government wants me to read more.
THE COURT: Ending at 24 on 5846?
MR. GOLTZER: Yes, sir.
THE COURT: Go ahead.
Q Were you asked these questions, did you give these answers under oath at a prior trial?
"QUESTION: Did you plan the murder of Michael Mancuso?
"ANSWER: Yes, I did.
"QUESTION: Did you talk to anyone else in the Bonanno Family about it?
"ANSWER: Yes, I did.
"QUESTION: Who?
"ANSWER: I was circulating to the captains in the Bonanno Crime Family, just basically seeing how they were feeling with Michael, if they were getting bad vibes from

him."

Did you give those answers to those questions under oath at a prior trial?

MS. ARGENTIERI: Objection.

THE COURT: Sorry, I thought we were going to the next page?

MR. GOLTZER: Oh, I'm sorry.

MS. ARGENTIERI: Actually said bad vibes with him, not from him.

THE COURT: With him. I thoughts we were going to the following page?

MR. GOLTZER: I meant where I stopped. If you want me to, I will.

THE COURT: It's not my -- is there any reason to go further?

MS. ARGENTIERI: No, Judge.

THE COURT: Let's redo that with the change with the preposition.

MR. GOLTZER: My confusion. I apologize.

THE COURT: No problem.

MR. GOLTZER: Shall I ask him again, Judge?

THE COURT: Go ahead.

Q Did you give the following answers to the following questions at a prior trial under oath, line 16?

"QUESTION: Did you plan the murder of Michael

Mancuso?

"ANSWER: Yes, I did.

"QUESTION: Did you talk to anyone else in the Bonanno Crime Family about it?

"ANSWER: Yes, I did.

"QUESTION: Who?

"ANSWER: I was circulating to the captains in the Bonanno Crime Family just basically seeing how they were feeling with Michael, if they were getting bad vibes with him. Then I discussed it with my acting captain -- "

MR. GOLTZER: I withdraw that last.

THE COURT: Right.

Q Did you give those answers to those questions under oath?

A If that's what it says on the paper, yes, I did, sir.

MR. GOLTZER: May we have a stipulation it was read accurately?

THE COURT: It was read accurately.

Q Was that a truthful answer when you gave it under oath at a prior trial?

A Yes, sir.

Q Were you circulating to the captains?

A To a different degree, different people I spoke about different things, yes.

Q Were you asking captains if they were getting bad vibes from Michael?

A Not all the captains; no, sir.
Q Which captains did you ask if they were getting bad vibes from Michael?
A I know I mentioned it to Louie Electric. I mentioned it to Alfred. Alfred wasn't a captain, though. I know he was close with Joe. I'm not sure -- I'm not sure who else.
Q Did you have the same conversations with any soldiers?
A Yes, sir.
Q Which soldiers did you ask are you getting bad vibes from Michael?
A To the best of my recollection, I remember saying it to Alfred.
Q These conversations took place over a period of some time?
A Yes, sir; that's correct.
Q After Vinny was arrested?
A Yes, sir. That's also correct.
Q Vincent Basciano had not instructed you to ask captains in the family whether they were getting vibes from Michael, had he?
A No, sir.
Q Vincent Basciano hadn't asked you to go to Alfred who was close to Joseph Massino and talk to him about Michael, had he?
A No, sir.
Q It was on your own that you were going to captains,

asking them if they were getting vibes from Michael, right?

MS. ARGENTIERI: Objection to "from Michael."

MR. GOLTZER: With Michael.

A Yes, sir; that's correct.

Q And you had been in the mob for a couple of years?

A Yes, sir; that's correct.

Q You knew that the mob involved deception?

A At times; yes, sir.

Q You knew that the mob involved paranoia?

A At times it happens; yes, sir.

Q You knew that the mob involved, at times, betrayal?

A Yes, sir, that's also correct.

Q You knew that everybody in the mob had to keep their antenna up?

A No, sir, that's incorrect.

Q Did you know that asking people how they felt about an acting underboss could make people afraid?

A I only -- like I said, I went to different degrees with different people. The people I was most comfortable with was Alfred. I had his loyalty and support, his guidance and Louie Electric, of course, whoever was in my crew at that time.

Q Alfred told you that you had his loyalty?

A Alfred was an elderly guy who told me he had -- Alfred knew I had the power. Alfred knew Vinny and Joe were close and I had Alfred's loyalty and support because Alfred even

told me.
Q Alfred told you you had his loyalty and support?
A Alfred told me I had his support.
Q Alfred had been around a lot longer than you?
A Yes, but Alfred was only a soldier in the crime family but Alfred had Joseph Massino's ear. Alfred advised me to continue to do what I'm doing.
Q You knew Alfred was a partner to Joseph Massino in the Casa Blanca restaurant?
A I knew that Alfred was a partner and very close to Joseph Massino; yes, sir.
Q You knew that Joseph Massino trusted Alfred to run his business?
A Yes, sir.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you know that Alfred was around the family when the three captains were killed?
MS. ARGENTIERI: Objection, relevance.
THE COURT: Sustained.
Q Did you know what Joseph Massino's reaction would be to the creation of factions within the family?
MS. ARGENTIERI: Objection, speculative.
THE COURT: Sustained.
Q To change the subject for a moment, you mentioned to the

government on direct examination that you were involved in mortgage fraud; is that correct?
A I recall the government mentioning it to me on direct.
Q It had to do with your grandmother?
A Yes, sir; that's correct.
Q This was your grandmother on your father's side?
A My father's mother, my grandmother; yes, sir.
Q Someone you loved?
A Yes, sir.
Q She's still living, by the way?
MS. ARGENTIERI: Objection, relevance.
THE COURT: Sustained.
Q When she was in her 80s, you asked her for permission to take out a mortgage on her home?
A Yes, sir; that's correct.
Q Do you recall the year that was?
A I think maybe some time in 2001 or 2002.
Q How much of a loan did you ask her for permission to take out on her loan?
A Actually, the loan was so high to take out on her home and being she was a senior citizen, she couldn't get approved. So, the deed to the house was transferred into my mother's name. The actual loan was under my mother's name.
Q For how much?
A I think, including the existing loan my grandmother had,

it was close to, I would say, maybe $300,000, to the best of my recollection.
Q Was there already a mortgage on your grandmother's house?
A Yes, sir. I just stated that.
Q How much was the house worth, if you know?
A At that time?
Q Yes.
A Maybe about 450-500,000.
Q You want to take out an additional loan of 300 and change?
A No, I just stated I think the full amount of the loan was about 300,000.
Q You were going to use the money to invest in real estate?
A I did use the money to invest in real estate and did Vinny Basciano Senior and Junior.
Q How much did you give them?
A I don't know for sure. I gave Vinny 50,000 to purchase a piece of property he was building houses with Anthony Donato and Vinny Junior, it varied because he was doing a construction job later on and he kept on needing money for the job.
Q What was your position with the Mafia at this time?
A I was an associate in the Bonanno Crime Family.
Q Did you have access to borrow money on the street?
A At that time?

Q Yes.
A I had access but I'm pretty sure I never utilized it at that time.
Q You didn't want to pay the point a week?
A I didn't have to --
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You would rather have borrowed the money from your grandmother?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You did borrow the money from your grandmother?
A Actually, yes.
Q In connection with that, there was a problem that arose over the necessity of signing some other documents that your grandmother or mother never signed?
A My mother never signed the other document at all. My grandmother signed probably half the other documents. The documents that were given to me originally, I brought to my grandmother. She signed them. She was aware of the additional monies that were being taken out on the house. When I went back to the Van Zandt Agency, I was handed, I believe, two more documents they forgot to give me.
Q What documents were those?
A Loan documents.

Q Documents that had to be signed by the applicant for the loan before the money could be approved by the bank?
A Yes, sir; that's correct.
Q When you received those documents at the Van Zandt office, you were about five minutes away from your grandmother's house, right?
A That's correct.
Q Were you too lazy to go over there and have her sign them?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you testify that you were lazy and that's why you didn't go, at a prior trial?
MS. ARGENTIERI: Objection.
THE COURT: You may answer.
A Yes, sir, I was lazy and I felt she already signed the document. I asked Kim Van Zandt, sign the other documents. You seen my grandmother sign the documents you gave me. So, that's what she did, she forged my grandmother's name on my behalf, on my instructions, actually.
Q So you ask her to forge your grandmother's name?
A Yes, sir, their.
Q That's because you were too lazy to take five minutes to go back to grandma, have her sign it?
MS. ARGENTIERI: Objection. He didn't use the term

"grandma."

MR. GOLTZER: Grandmother. I call mine -- grandmother.

THE COURT: You may answer.

A Could you repeat that, please?

(Read back.)

A Yes, sir, I was lazy.

Q As a result of the loans you took out on your grandmother's home, did the house go into foreclosure?

A After my arrest, nobody was able to pay the loan payments and I'm pretty sure at one time the house was going into foreclosure; yes, sir.

Q Was there a complaint filed against you by your aunt in connection with the mortgages that you took out on your grandmother's home?

A At the time the mortgages were taken out and the title transferred into my mother's name because actually at that point in time the house was my mother's home, even though it's my grandmother's but legally, it's my mother's home. My aunt wasn't aware of anything. If she was aware, she would have had a fit. She would have flipped out. In the end, we're talking about my father's sister, my grandmother's daughter.

Q The question is whether a complaint was ever brought against you, a criminal complaint?

A I don't know. That I have no idea.

Q How long had your family owned the house before you took out the loan?
A Many years.
Q 30, 40, 50?
MS. ARGENTIERI: Objection, relevance.
THE COURT: Sustained.
Q When you went to your grandmother to borrow that money, you were already an associate in the Massino Crime Family?
MS. ARGENTIERI: Objection, asked and answered.
THE COURT: Sustained.
Q At the time you took out those loans, you knew that it was a possibility that your arrest could happen?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did it occur to you -- I mean you want to pay this money back?
A Of course. I never intended for my grandmother not to get paid back.
Q You would never do anything to harm your mother?
A My mother?
Q Yes.
A Right now my mother isn't harmed because she's still living at the same residence. I guess what I'm doing by being a government informant, my entire family is in harm's way because they're still in the neighborhood.

Q They've been in the neighborhood for the last six years since you've been arrested?
A Yes, sir.
Q Nobody has harmed them.
A Things have happened, sir. Would you like me to elaborate? I will.
Q The question I asked you whether when you were taking out the mortgage, you intended to pay the money back so you wouldn't harm your family?
A Eventually, yes, I intended to pay the money back to pay my grandmother; that's correct.
Q How were you going to pay it back after you got arrested?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
MR. GOLTZER: Would this be a good time to break for lunch?
THE COURT: No, let's finish this line of questioning.
MR. GOLTZER: This line is finished.
THE COURT: In that case, we'll take our lunch break. All rise for the jury.
(Jury leaves courtroom.)
THE COURT: The witness may stand down.
Do not discuss your testimony with anyone. We'll take an hour for lunch. (Recess.)

AFTERNOON SESSION

(In open court; defendant not present.)

THE COURT: Let's bring in the defendant, please.

(Defendant present.)

THE COURT: All right. The defendant is present.

I'm directing that the parties provide to the Court by midnight a proposed jury instruction on causation under both federal and state law with regard to the murder charge and the weapons charge, and it should address directly causation under an aiding and abetting theory with regard to the possibility that Mancuso's order nullified or altered the alleged original order provided by the defendant to Mr. Cicale.

About how much more do you have for this witness, Mr. Goltzer?

MR. GOLTZER: I'm not sure, Judge, but certainly I'm going to finish him this afternoon.

THE COURT: What's that?

MR. GOLTZER: I'm certainly going to finish him this afternoon.

THE COURT: And the Government has a witness for after the completion of this witness?

MR. DENNEHY: Yes, your Honor. Mr. Barbieri.

THE DEFENDANT: Before he finishes the witness, can he come over and talk to me? Is that possible, Judge? Just

before he finishes talking to him, could he come over?

MR. GOLTZER: The request of the defense is that before the witness is finally excused, can I have a chance to confer with my client and co-counsel for a few minutes?

THE COURT: Sure.

THE DEFENDANT: Thank you very much.

MR. GOLTZER: Thank you.

(Witness resumes the stand.)

MS. MERKL: Your Honor, just so we are certain to address the Court's request, is there any possibility we could get a short printout?

THE COURT: Yes, we could get that, and we're going to provide it.

MS. MERKL: Perfect.

THE COURT: It's in my law clerk's hand and it will be provided to you. It's what -- basically I'm not going to make it a separate exhibit because it's what I told you.

MS. MERKL: Absolutely. I want to make sure we captured everything.

THE COURT: Is that agreeable?

MR. GOLTZER: Sure.

THE COURT: And that would help Mr. Jasper as well who I believe didn't catch everything.

MR. JASPER: Yes. I'm getting old.

THE COURT: I don't think we ought to move in that

direction at all.

At the end of the break, we should discuss the two submissions that I've gotten, one from the government and one from the defense in way of motions with regard to the, the limine question and also the log question.

(Jury enters at 2:15 p.m.)

THE COURT: Please be seated everybody.

Members of the jury, before we begin or continue, rather, let me just make a slight revision in the schedule for tomorrow.

We're not going to begin at 9 a.m. We'll begin at 9:30 as usual and go to 11:30 and then take the break until 2:30 and then resume at 2:30. So the little change is we're starting a half an hour later than what's on the schedule.

Okay. Mr. Goltzer, you may continue your cross-examination of the witness. The witness is reminded that he is still under oath.

MR. GOLTZER: Thank you.

CROSS-EXAMINATION (Cont'd)

BY MR. GOLTZER:

Q Mr. Cicale, are you familiar with a restaurant named Villa Sonoma?

A Yes, sir. I think it's either Villa Sonoma or Napa Sonoma. I'm not sure of the exact name.

Q Have you referred to it during your direct examination as

Napa Sonoma?
A I might have.
Q Did you refer to it in a prior trial as Villa Sonoma?
A I might have, yes, sir.
Q Do you remember whether you referred to it as Villa Sonoma at a prior trial?
A I'm not sure if it was Villa or Napa Sonoma, I said.
MR. GOLTZER: May I approach the witness, your Honor?
THE COURT: Yes, you may.
MR. GOLTZER: I'm showing the witness what's been, may it be deemed marked for identification as GX3500-DC84B, at page 5815 to 5817.
BY MR. GOLTZER
Q Mr. Cicale, may I trouble you to take a look at that document. Read it to yourself.
A (Witness perusing document.)
Q Have you had a chance to look at that?
A Yes, sir, I have.
Q Does that help you to refresh your recollection with respect to whether at a prior trial you referred to the restaurant as Villa Sonoma?
A Yes, sir.
Q And did you refer to the restaurant as Villa Sonoma?
A Yes, sir.

Q Do you know whether the real name of the restaurant is Villa Sonoma or Napa Sonoma?
A No, sir. It's either Villa Sonoma or Napa Sonoma. I don't know the exact name of the restaurant.
Q Have you ever seen the name Villa Sonoma anywhere else before?
A I don't recall, sir.
Q Is it accurate that the name Villa Sonoma appears -- you overheard the name Villa Sonoma on one of the Massino-Basciano tapes that were made in December of 2004 and January of 2005?
MS. ARGENTIERI: Objection to "overheard".
THE COURT: Sustained.
BY MR. GOLTZER
Q Did you listen to those tapes?
A Yes, sir.
Q Did you read transcripts of those tapes prepared by the Government?
A I think I did, sir, yes, sir.
Q Did Villa Sonoma come from either one of those tapes if you remember?
A I don't remember if it was Villa Sonoma or Napa Sonoma, sir.
Q Now, you indicated yesterday that there was a deadline at the Schurz Avenue job, is that correct?
A Yes, sir.

Q And that was with respect to some changes that were taking place in the zoning regulations, is that correct?
A Yes, sir, that's correct.
Q And depending upon whether you and other people involved with that job met the deadline -- by the way, you had a financial interest in that job?
A At the end of the job, yes, sir.
Q So you wanted the deadline to be met?
A Actually, it was more of Vinny Basciano wanted the deadline to be met. All of us who had an interest in the property, yes, sir, that's correct.
Q And the deadline had to do with excavating a certain amount of dirt by a certain date?
A The deadline had to do with installing the footings and foundation walls by a certain date, sir.
Q And if the -- if the footings and foundation walls were not installed by that particular date, essentially you would only be able to build 8 out of the 15 planned houses, right?
A I surmised that number, eight, but, yes, it would be downzoning so we wouldn't be able to put up 15 houses in that piece of land.
Q By "downzoning" you mean a particular piece of property a particular size would be able to accommodate less houses legally?
A Right, we wouldn't be able to maximize on that property.

Q In order to maximize the construction -- to maximize the profit, you wanted to maximize the construction?
A Yes, sir, that's correct.
Q And there was a budget for the construction of each of the 15 houses?
A There's always a budget but I wasn't familiar as far as I didn't know the paperwork, I didn't know the budget. It wasn't -- I was basically just receiving an end because I brought that property to Vinny Basciano's attention.
Q Was there was an anticipated profit per unit?
A Again, I really don't know how they structured it because Vinny Basciano was taking the house. Robert Van Zandt, Senior was taking the house. Anthony Donato was getting X amount of dollars because he had a third of the project.

So whatever Vinny's end, cash end would be, his profit at the end of the day, I was getting, he was going to give me 10 percent of that, of his end. So whatever the figure was, it was.
Q Whatever the figure was, it was going to be a better figure if it was 15 houses instead of eight?
A If it was only eight houses, it wouldn't benefit -- actually Robert Van Zandt purchased the property. The amount of money he paid for it, if it was only eight houses they were putting up for it, that whole project would have failed. It wouldn't -- they would have never made money off of it because

the cost of the land would have been too high.
Q So without meeting the deadline for the footings and foundation walls, it would have been disastrous?
A Yes, sir.
Q Financially?
A Well, not for me. I have nothing financially invested in it but for --
Q For Vinny?
A For Mr. Basciano, Robert Van Zandt and Anthony Donato, it would have been, that's correct.
Q And Randy Pizzolo met the deadline?
A Yes, sir, he did.
Q Randy Pizzolo's responsibility was doing excavation work?
A All the excavation on, excavation work on the jobsite and to pour the footings and foundation walls.
Q There were a couple of minor problems that ultimately developed with respect to the jobsite?
A I would say there was more than a couple of problems, sir.
Q Well, there was a barrel sticking out of a foundation wall?
A Later on we came to find the barrel sticking out of the foundation wall, yes.
Q Correctable?
A Yes, sir.

Q There was a piece of plywood sticking out of something?
A Out of footing and the foundation wall, yes, sir.
Q Correctable?
A Yes, sir.
Q Didn't cost as much to correct those things as the profit you would have lost if he hadn't met the deadline?
A Yes, sir, that's correct.
Q And you've been involved in several construction jobs?
A Yes, sir, I have.
Q Have you ever been involved in a job when there wasn't some kind of problem?
A Very rarely. Any construction job gets performed and completed without something going wrong.
Q So if something went wrong on a brick wall, for example, that wouldn't be unusual?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
BY MR. GOLTZER
Q Did you know a fellow named Dennis Delucia?
A Yes, sir.
Q Who is he?
A Dennis Delucia was at the time a soldier in the Colombo crime family.
Q And did Mr. Pizzolo build a wall or some steps for him?
A Excuse me. Yes, he repaired some steps in front of

Dennis Delucia's house. He needed repair work done.
Q Was there a problem?
A Excuse me?
Q Was there a problem with the repair?
A Dennis really couldn't complain because I had sent Randy over there to do the job and I wasn't charging Dennis because he's a friend of mine, but the work wasn't up to standard.
Q Was it done over?
A I think so. I'm really not sure if it was done over.
Q Did you do anything to Randy Pizzolo as a result of that?
A No. I asked Randy what was he doing that was making me look ridiculous in front of my friend but --
Q You worked it out?
A Basically, yes.
Q And when, when Randy's -- Randy was responsible for some of the subcontractors originally on Schurz, is that correct?
A As the job progressed, yes, sir.
Q And he brought in some bricklayers?
A Yes, sir.
Q And the bricklayers that Randy brought in put up a part of a brick wall on the Basciano house?
A Yes, sir.
Q And Vinny didn't like it?
A That's correct.
Q So they took down the wall?

A That's correct.
Q And then you got some other bricklayers?
A I'm not sure who went on that -- yes, I would say so, yes.
Q And in fact, you and Vinny discussed at various times whether Al Perna would be more knowledgeable in terms of getting subcontractors for the job, is that correct?
A No, sir. You're taking that out of context.
Q Did there come a point where Al Perna was in charge of getting contractors, subcontractors for various types of work at the Schurz Avenue job?
A Yes, yes, there did come a time.
Q And, in fact, he replaced Randy Pizzolo?
A Yes, sir, that's correct.
Q Because Mr. Basciano expressed more confidence in Mr. Perna for that function than he did in Mr. Pizzolo?
A Yes, sir, that's correct.
Q And you knew that Al Perna -- you believe that Al Perna was a partner of Mr. Pizzolo in the A&P Construction Company, is that right?
A I know for a fact they were partners in A&P Construction, yes, sir.
Q And the project at Schurz Avenue was being built ostensibly by Burke & Grace, is that correct?
A I don't know if it was being built by Burke & Grace

because, what I was aware of, that Empire Builders owned that piece of property.

Q Do you know what Burke & Grace was?

A Yes, sir.

Q Burke & Grace was a company, is that correct?

A To the best of my knowledge, yes, it was.

Q And Burke & Grace was a company in which Angela Basciano had some share?

A If that's what they had on the paperwork, then, yes, but I know Vinny Basciano, that was Vinny Basciano's company along with Anthony Donato and Robert Van Zandt.

Q You indicated yesterday that Vinny, to avoid Government seizure of properties, was placing things in his wife's name?

A Vinny was taking precautions as far as if the Government ever arrested him and charged, charged him with anything, that nothing would be in Vinny's name. It was all be in his wife's name.

Q I'm sorry. Did I interrupt you?

Was one of the precautions Burke & Grace?

A One of the companies was Burke & Grace, Corp.

Q And you knew that Burke & Grace was sending checks from the Burke & Grace corporation to the A&P corporation, right?

A Again, I don't know where checks were going. I didn't do the paperwork. I didn't sign checks so I didn't know actually who was on the corporation and all I know is Robert Van Zandt

took care of all the paperwork.
Q Randy's company wasn't doing the Schurz Avenue property for nothing, was he?
A No, he was not.
Q Randy's company was getting paid substantial sums of money to do the work?
MS. ARGENTIERI: Objection to the term "substantial".
THE COURT: Sustained.
BY MR. GOLTZER
Q Were they getting sums of money to your knowledge?
A To pay the contractors that they would hire on the job, I don't know if Randy got it directly. I don't know the particulars of the payments.
Q You can hold back monies when work is done inappropriately, correct?
MS. ARGENTIERI: Objection. Calls for speculation.
THE COURT: Sustained.
Q Have you ever held back monies when work was done inappropriately?
MS. ARGENTIERI: Objection. Relevance.
THE COURT: I'm sorry. What?
MS. ARGENTIERI: Objection. Relevance.
THE COURT: You may answer.
A I have held back and I also gave advancements for people

who work on my job sites so it works both ways.
Q Were you aware of any amount of money that was held back from the A&P from the work it did on the Schurz Avenue project?
A For A&P? No, sir, I did not. I wasn't aware of that.
Q Now, there came a point when Randy moved over to Blondell, is that right?
A No, sir, that's incorrect. Randy didn't move over from one job to another.
Q What happened?
A He worked simultaneously on Blondell and Schurz Avenue.
Q Whose choice was that, if you know?
A At the end of the day, it was Randy's choice.
Q Did anybody stop him?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Now, you indicated yesterday, did you not, that Randy was doing Blondell at cost as a courtesy to Van Zandt?
A That was part of the agreement with the stipulations if Randy performed, had the building up and running before tax season of 2005, Randy would receive a $30,000 bonus.
Q Did he get it, if you know?
A How could he?
Q Well, that's right. You're right. I withdraw that. He was killed before that date.

A Yes, sir, that's correct.
Q Do you know if A&P got the bonus?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
BY MR. GOLTZER
Q Do you know if the building was completed before tax season 2005?
MS. ARGENTIERI: Objection. Relevance.
THE COURT: Sustained.
Q There was -- and it was Vinny Basciano that asked Randy to do that for Mr. Van Zandt, isn't that true?
MS. ARGENTIERI: Objection to "asked".
Q Did you testify yesterday that Vinny Basciano was asking Randy to do that?
A Vinny Basciano did ask Randy if he would be interested in that type of work and at the end of the job, if he performed, if he had the building up and running before that tax season, Randy would receive the $30,000 bonus and Randy Pizzolo agreed that, yes, he'll take on that challenge.
Q Did Vinny Basciano to your knowledge ask Randy Pizzolo if he would be interested in that kind of work while Randy Pizzolo was still working at the Schurz Avenue project?
A Can you repeat the question, please?
MR. GOLTZER: May we have it read back?
THE COURT: Try to stay near the microphone. I

think that was the problem.

MR. GOLTZER: I apologize.

THE COURT: That's okay.

Please read back the question.

(Record read.)

A Yes, sir.

Q And did you overhear Vinny Basciano saying to Randy Pizzolo at that time, you're biting off more than you can chew?

MS. ARGENTIERI: Objection to what the defendant said, Judge.

THE COURT: Sustained.

BY MR. GOLTZER

Q Did you say to Randy Pizzolo, I think you're biting off more than you can chew?

A No, sir, I did not.

Q Did you believe at that time that Randy Pizzolo was, in fact, biting more than he could chew?

A No, sir.

Q There was a ten story office building that you alluded to in yesterday's testimony, right?

A No, sir, that's incorrect.

Q Was there an office building with a steel company involved?

A No, sir. Again you're misstating. That's incorrect.

Q What am I misstating?
A It wasn't --
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Was there a ten story building involving steel?
A Yes, sir, there was.
Q And it wasn't an office building?
A The downstairs -- the main floor was supposed to be office spaces and the rest of the building was residential.
Q Did I misstate anything else?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Now, was that a ten story building?
MS. ARGENTIERI: Objection. Relevance.
MR. GOLTZER: I promise it's relevant.
THE COURT: You may answer.
A There was plans to erect a ten story steel building on the site of Villa Avenue in the Bronx.
Q And there was a kickback involved?
A Which kickback? Are we talking about the kickback with the steel company?
Q Yes.
A Yes, sir, there was a kickback involved.
Q This steel company that was involved in the kickback was a company that was around Randy Pizzolo?

A Yes, sir. That's correct.
Q By "around Randy Pizzolo," what did you mean?
A Well, the company was with Randy Pizzolo. He had control over the company.
Q It was not an insubstantial company, was it? It was a real steel company?
A No, to put up a ten story building, to construct a ten story building, it's a big steel company.
Q So the fact that Randy Pizzolo had a large steel company around him was an asset to Bonanno family as you understood?
A Yes, sir.
Q It was something of value that Randy Pizzolo brought along with him that would increase the money going into Vinny's pocket?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You didn't want -- you knew about the kickback?
A Yes, sir.
Q How much money was budgeted, if you know, for the steel in the ten story building?
A To the best of my recollection, I think the steel company came in with a bid of, I think it was 3.6 million, somewhere around there. That was the bid they submitted to do, to erect the ten story building.
Q Was that bid acceptable?

A Yes. The bid was -- whatever the bid, the exact, the actual figure was, it was accepted and agreed upon that Randy's company would perform the erection of the ten story building.

Q And the three -- what was your, the percentage of the kickback out of the $3.6 million steel budget?

A Well, if you want to break it down into percentages, we were supposed to get I think it was $365,000. That would be 10 percent.

Q And it was going to be paid in stages?

A As the steel company would receive money. It's a drawdown. At each stage, they would receive different draws as they progress onto the job and fabricate the steel.

On each draw, there's different denominations. So, each denomination, we would be receiving a certain percentage of each drawdown.

Q And this was under-the-table money?

A I don't know if it was under the table because I know Randy had shown me a contract that was drawn up with Randy's company and the steel company and gave a scheduling on the drawdowns for each draw, each payment that they would receive, we would get X amount of dollars.

Q Was Randy involved in structuring the kickback that was going to get somebody $360,000?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did you discuss with Randy the kickback scheme?

A Yes, I did.

Q What discussions did you have with Randy about the kickback scheme?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

MR. GOLTZER: Offer of proof, Judge, at sidebar?

THE COURT: Okay. Sidebar.

(Sidebar conference.)

(Continued on next page.)

THE COURT: Okay. Let's do it.

MR. GOLTZER: Yesterday the Government offered, as a motive for the murder of Randy Pizzolo, Vincent Basciano's anger that Mr. Pizzolo was paying someone named Melnich, M-E-L-N-I-C-H, $300 a day for doing virtually nothing at a jobsite.

I'm offering this testimony to show Randy Pizzolo's financial value to Vincent Basciano and the family to the tune of $360,000 by way of kickbacks to negate the Government's theory that they would kill him over 300.

MS. ARGENTIERI: First of all, the argument was not that Vincent Basciano had Randy Pizzolo killed over $300. The notion was that he, Robert Van Zandt, thought that Randy Pizzolo was stealing from him with regard to the very lucrative and very extensive Blondell Avenue project which Randy Pizzolo was supposed to be doing at cost.

The fact that he had that conversation with Joey Melnich was the first hard proof that he had that what Robert Van Zandt was saying was true and that all of the bills that he was getting were instances where Randy Pizzolo had overcharged him. That's to the first point.

Second, I don't think that this witness has testified that all of those kickbacks were going in Randy Pizzolo -- were going in Vincent Basciano's pocket, so the

notion that the $300 can be compared to $365,000 is absurd.

Third, these are co-conspirator statements that Mr. Goltzer is attempting to introduce against the Government which is not proper.

THE COURT: I'll allow it.

MR. GOLTZER: I'm sorry?

THE COURT: Yes, she's right.

MR. GOLTZER: It's actually though -- he's a co-conspirator with Randy Pizzolo and Vincent Basciano in the kickback scheme, and the fact that they brought it out on direct as to what Randy Pizzolo and Vincent Basciano -- what Basciano and Cicale discussed about kickback schemes entitles me to rebut it.

Also, the fact that Cicale has personal knowledge of the kickback scheme still negates the motive to kill Pizzolo that they've offered for stealing from Van Zandt because he and Basciano were stealing from Van Zandt with Pizzolo.

MS. ARGENTIERI: He didn't testify -- sorry, Judge.

THE COURT: Go ahead.

MS. ARGENTIERI: He didn't testify that he and Basciano had discussions about the kickback scheme. He testified that the monies from this was used to buy the property in Florida. That's what he testified to.

MR. GOLTZER: It's still related to the motive to kill or the absence of the motive to kill, and they testified

yesterday that they were specifically instructed not to tell Van Zandt about the kickback scheme. It's very important and we're entitled to bring it in as part of our defense.

MR. FRANK: It's entirely a different question when Van Zandt knows he's going to get ripped off.

MR. GOLTZER: I'm going to deal with that too in the phone conversation that Cicale had with Basciano on November 25th which they have a recording of where Van Zandt, where Cicale said to Basciano on the phone, Van Zandt's complaining that everybody is stealing from him. It's absolutely appropriate testimony to rebut what they raised on their direct case over $300, Judge.

MS. ARGENTIERI: You've raised an issue with regard to these statements and they're hearsay.

THE COURT: Okay. The objection is sustained.

(End of sidebar.)

(Continued on next page.)

THE COURT: Okay. All right. You may proceed.

BY MR. GOLTZER:

Q Was Randy Pizzolo's bringing the steel company around of value to the family?

A I don't know if it was of value to the family, but at that point in time, was of value to myself and Vinny Basciano.

Q Was Randy Pizzolo -- was the kickback money of any value to you?

A The agreement we had with the steel company, yes, it was of value to me, that's correct.

Q And was Randy Pizzolo given credit for bringing that back?

MS. ARGENTIERI: Objection to "credit".

THE COURT: Sustained.

Q Was Randy given any benefit of having brought that about?

A Yes. Randy would receive monies also. We were all partners on it.

Q How much did Randy receive?

A A third.

Q What was a third, 120,000?

A Whatever a third would come out to be, that's what Randy would receive at the end of the day if the job got completed.

Q And how long was the job supposed to go on?

A Again, that I wouldn't know.

Q Now, when was it that this contract was signed, if you know? It was obviously in 2004.
A I don't know the particulars of that. That was -- Randy was handling it and so was his wife, Roxanne.
Q Do you remember whether you got any of that money in October of 2004?
A Personally, I didn't receive any monies. Randy, I know, received a check for I think it was approximately $15,000. That was the first installment on the draw because they received the payment from Robert Van Zandt to start fabricating the steel.
Q Did you know whether Vinny got a check?
A Again, Randy received a check. Nor Vinny nor I received any money. Randy received the check and Randy allocated that money towards the property in Florida.
Q So it was part of your agreement that the money from the ten story building kickback scheme was to finance money in Florida?
MS. ARGENTIERI: Objection.
Q To finance property in Florida?
MS. ARGENTIERI: Objection as to part of their agreement.
THE COURT: Sustained.
Q Did you have an agreement of which Randy Pizzolo was a party involving property in Florida?

A An agreement? We purchased property. We purchased -- we were in contract for three parcels of land to build three houses on.
Q When you say "we", who's we?
A It was me, Vinny Basciano and Randy Pizzolo.
Q And the three parcels of property, how much acreage did that entail, if you know?
A I have no idea, sir.
Q Was it a large tract of land or a small tract of land?
A Each parcel was big enough to sustain one house on each parcel.
Q And do you know the size of the house that was anticipated?
MS. ARGENTIERI: Objection. Relevance.
THE COURT: Sustained.
Q While -- and was this done while Randy Pizzolo was still working at Schurz?
A I don't recall exactly when it was done.
Q Was this done when Randy Pizzolo was still working on Blondell?
A Again, the exact time -- actually, when what was done? When the property was purchased?
Q In Florida.
A When the property was -- when we went to contract?
Q In Florida, yes.

A To the best of my recollection, Randy was still on good terms with Vinny Basciano.
Q And that was in November of 2004?
A No, sir.
Q When?
A I -- Randy was on good terms at the time we originally purchased the property in Florida.
Q And you don't know when that was?
A I know it wasn't November of 2004.
Q October?
A To give a -- if you want me to guesstimate, I would say September of --
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q There's no need to guess, is there?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Now, was this while -- this was obviously while the ten story building was being prepared?
MS. ARGENTIERI: Objection to "obviously".
THE COURT: Sustained.
Q This was while the ten story building was being prepared?
A For me to say accurately with the time frame, I can't because I was doing my own construction projects. I was running the real estate office and auto repair shop. I had a

bar lounge being constructed and I had to control all the members in my crew so to accurately say the time frame, I can't.

Q Can you accurately tell us what percentage of your auto shop business involved fraudulently inflated insurance claims?

A Could you repeat that, please?

MR. GOLTZER: May we have it read back?

THE COURT: Yes.

(Record read)

A With my auto repair shop, there would be some adjusters that would come in that we would give a couple hundred dollars to and they would pad the bills. They would inflate the estimate on the damage.

So, instead of me repairing a car door, if there was door damage, they would write it as a brand new door so maybe a couple hundred, it would be maybe 500 to a thousand dollars of an inflation on the estimate.

Q So you were engaged in your own kickback scheme with insurance adjusters, right?

MS. ARGENTIERI: Objection to the characterization.

THE COURT: Sustained.

Q Were you engaged in a fraudulent scheme with adjusters?

A I was engaged and so was Steven Basciano, yes, sir.

Q Did I ask you about Steven Basciano?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Let's talk about you, okay, Mr. Cicale?

THE COURT: Just ask your questions.

Q Were you engaged in a fraudulent insurance scheme?

MS. ARGENTIERI: Objection. He answered it.

Q You were engaged in a fraudulent insurance scheme?

THE COURT: Sustained.

Q The question you didn't answer, sir, I ask you again is what percentage of the repairs that you did at your insurance auto body, at your auto body shop were fraudulent?

A I didn't sit down and estimate the percentage, but there was quite a bit of fraud going on.

Q So you were stealing from insurance companies?

MS. ARGENTIERI: Objection to the characterization.

THE COURT: Overruled.

You may answer.

A Yes.

Q And paying commercial bribes to their employees?

A If that's what you call it, yes.

Q Now, let's go back to the Florida property for a moment.

It was anticipated that there was going to be a project in Florida involving 900 homes and -- right?

A That's a -- yes, approximately, yes.

Q And in addition to the 900 homes, a company that you and Randy and Vinny were involved in and Van Zandt were going to

build schools?
A That's incorrect, sir.
Q What else, if anything, apart from the homes was going to be built?
A Well, first off, you had the partners involved incorrect. Van Zandt was not involved in that project.
Q Please correct me.
A It was myself, Vinny Basciano, Randy Pizzolo, and Al Perna.
Q And it was going to involve a project with 900 homes?
A It was a project to put up a development.
Q And what was the development going to consist of?
A There would be homes, schools, roads, shopping centers. Churches.
Q And did you indicate yesterday that it was Randy Pizzolo who had investors for that project?
A Yes. Randy Pizzolo had investors and it was actually their project. They were looking for builders.
Q Did you know who Randy Pizzolo's investors were?
A I went down to Florida to meet them but I didn't know of them nor did I know them. I spoke with them. They showed me around the area in Clearwater, Florida, and then that was it. I left back to New York. Randy stood in Florida with the investors.
Q When was that?

A I would say sometime in 2004.
Q Toward the end?
A No, sir, I don't think so.
Q Did you report to Vincent Basciano about your meeting or your discussions with Randy and investors in Florida?
A Yes, sir.
Q What did you tell Mr. Basciano about that meeting?
A I informed Vinny Basciano about the project that we might be getting in Florida, that Randy had a group of investors that was looking to purchase a big track of land and they were looking for builders and they would give us the opportunity to be the builders to perform all the work on that jobsite.
Q Did you tell Mr. Basciano that this appeared to be a real project with real investors?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you tell Mr. Basciano that this might be real?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you tell Mr. Basciano anything else?
MS. ARGENTIERI: Objection. Hearsay, Judge.
THE COURT: Right.
MR. GOLTZER: I'm offering it not for the truth but the fact the statement was made.
THE COURT: All right. You may answer.

A I informed Mr. Basciano on what might happen.
Q And what did you tell him might happen?
A I informed him that we might have a project that Randy had some investors that, they're looking to purchase a track of land and they're, at this point, looking for builders to do all the construction work on that project.
Q And it was hoped that you would be the builders?
A Yes, sir, that's correct.
Q And at the same time or approximately the same time, is it accurate to say that Mr. Basciano was trying to develop a tract of land in Sullivan County, New York with 300 houses on it?

MS. ARGENTIERI: Objection.

THE COURT: I'm sorry. Objection --

MR. GOLTZER: The question, Judge --

THE COURT: Sorry. I'll just read the question.

Sustained.

BY MR. GOLTZER
Q Is it accurate to say that a project involving the construction of a community involving 900 houses and satellite buildings would have been profitable for you?

MS. ARGENTIERI: Objection.

THE COURT: You may answer.

A Yes, sir.
Q And you would have had to employ large numbers of persons

in Florida?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

BY MR. GOLTZER

Q Randy Pizzolo, it was anticipated, was going to be in Florida working on that project?

MS. ARGENTIERI: Objection. Time frame?

MR. GOLTZER: At the end of -- while he was alive in October or November of 19, of 2004.

THE COURT: You may answer.

A Randy Pizzolo and Al Perna would be running that project in Florida. Myself and Vinny Basciano would remain in New York and really not be on that project.

Q But if the project went through, you would get some money from him?

A Yes, we would.

Q Both you and Mr. Basciano?

A Yes, sir, that's correct.

Q Now, did you and Randy Pizzolo and Vincent Basciano, the group of investors, the group of contractual parties, ever discuss the anticipated profits that you would get?

MS. ARGENTIERI: Objection to the group of contractual partners.

THE COURT: Sustained.

Q Did you ever discuss with Mr. Basciano the amount of

money you might earn from the project in Florida?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did you ever discuss a budget?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did Van Zandt complain that everybody was stealing from him?

A I don't know if he complained about everybody but I know he complained about Randy Pizzolo stealing from him.

Q Did he complain about anybody else?

A Again, I know Robert Van Zandt complained about Randy Pizzolo. I don't know about anybody else.

Q Anybody else?

MS. ARGENTIERI: Objection.

Q Do you know if he complained about anybody else?

THE COURT: Is that an objection?

MS. ARGENTIERI: Objection. Asked and answered.

MR. GOLTZER: It wasn't answered. That's why I'm asking.

THE COURT: All right. You may answer the question.

A Again, all I'm aware of is Rob Van Zandt complained that Randy Pizzolo was robbing him. I don't know about anybody else.

Q Did you ever on November the 25th, 2004 tell Vincent

Basciano that Van Zandt was complaining that everybody was ripping him off?

MS. ARGENTIERI: Objection. Hearsay.

THE COURT: Sustained.

MR. GOLTZER: I'm offering it as a prior inconsistent --

THE COURT: All right. You may answer.

A If I recall correctly, on November 25th, Vinny Basciano was incarcerated.

Q And he called his wife on a recorded phone for Thanksgiving, right?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

BY MR. GOLTZER

Q Weren't you present when he spoke to Angela Basciano on the phone on Thanksgiving day?

A Yes, sir, I was.

Q And didn't -- do you see Angela Basciano in court?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did Angela Basciano put you on the phone with Vinny?

A I was on speaker.

Q And you could hear what he was saying?

A Yes, sir, I could.

Q And he could hear what you were saying?

A Yes, sir, that's correct.
Q And didn't you and Vinny Basciano discuss the fact that everybody, that Van Zandt was complaining that everybody was ripping him off?
MS. ARGENTIERI: Objection to the defendant's statements.
THE COURT: Sustained.
Q Did you say to Mr. Basciano that Van Zandt is complaining that everybody's stealing from him?
A I don't recall at this time if I did say that or if I didn't.
Q Would hearing that recording help refresh your recollection?
A Yes, sir, it would.
Q Now, you mentioned a fellow by the name of Melnich, Melnich from the purple gang?
A Yes, Joey Melnich, that's correct.
Q Who is Joey Melnich?
A Joey Melnich is a member of the Purple gang who's also around Michael Mancuso of the Bonanno crime family.
Q And there came a time when you and Mr. Basciano came upon Mr. Melnich at the Blondell site?
A Yes, sir, that's correct.
Q And this was at night?
A No, sir, it was not.

Q It was during the day?
A It was during working hours, yes, sir.
Q And there were people at the time who were engaged in construction?
A Yes, sir, there was construction going on at the Blondell Avenue jobsite.
Q And somebody asked Mr. Melnich what he was doing there?
A Vincent Basciano asked Joey Melnich what he was doing there.
Q And Joey Melnich said he was working?
A No. Joey Melnich said he was supervising.
Q Did anyone ask Mr. Melnich what it was that he was supervising?
A Yes.
Q And what was the answer?
A Mr. Melnich was supervising the bricklayers that were on that job.
Q Was Mr. Melnich in the union?
A Pardon me?
Q Do you know whether Mr. Melnich was in the union?
A To the best of my knowledge, Joey Melnich was in the bricklayers union.
Q And do you know whether the particular bricklayers that he was supervising were in the union?
A No, I do not.

Q Was there anything unusual in your mind about Mr. Melnich, with anybody supervising bricklayers?
A On that type of job? Yes, it's very unusual or even to have union, union workers on that type of job because the pay scale would go off the charts.
Q Well, he was being paid $300 a day as he told you?
A Yes, sir, that's correct.
Q And if it was a non-union -- what would the pay scale have been for someone who was not a union worker?
MS. ARGENTIERI: Objection. Relevance.
Q If you know.
THE COURT: I'm sorry. Sustained.
Q You indicated that there was a difference in pay scale, is that correct?
A A substantial difference in that type of work, yes, sir.
Q What was the difference?
A The type of work that was being performed at Blondell -- we're in the contracting business so we're not going to pay retail. If we bring bricklayers on and I can say, for instance, the houses I was building, they might charge me maybe $7 a yard or a foot, however they wanted to build it. If I brought union workers on to that job, I may pay maybe 25, $30. How could I make money? I'm not bringing them on so they make money. I'm bringing people who are going to come in at a good price.

By Randy Pizzolo -- if he had union guys on that job, then he was definitely robbing Robert because Randy was getting the check and then Randy was paying these people so it just doesn't make sense. The cost would be too high.

Q So is that what you meant when you said Randy was robbing Van Zandt, that he was hiring union workers?

A It wasn't what I meant. Right now, yes, it's what I said, but at the time, it was Robert Van Zandt was complaining that the prices were too high and he was paying too much money and after myself and Vinny Basciano saw that Joey Melnich was on the job and Joey Melnich was getting $300 for sitting around just watching people, then that made Vinny Basciano realize Randy Pizzolo was robbing Robert Van Zandt and Robert Van Zandt this whole time wasn't delusional.

Q Okay. Now, this is the same Randy Pizzolo who arranged for Vincent Basciano to have a share of a $360,000 kickback on a Van Zandt project?

A That's incorrect. I arranged for Vinny to have his share on the project because I had it going on with Randy and I brought it to Vinny's attention. I let Vinny Basciano know he had an end and Vinny Basciano instructed me don't tell Robert because I wasn't going to bring somebody on the jobsite, Vinny's jobsite and make money off of Vinny. I wouldn't do that.

Q Is this the same Randy Pizzolo who made it possible to

bring around the steel company from which you were taking the kickback?

A You say kickback but actually it was a finder's fee because if you work for any type of company, there's companies like lumber yards. If I bring you in as a client and you give 100, say a $1 million order, I get a percentage.

So, basically what Randy did was he brought the steel company aboard, they bidded on the job, and within their budget, they were able to give Randy a finder's fee.

Q This the same Randy Pizzolo who made it possible to get a finder's fee on a $3.6 million steel budget?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q It was the same Randy Pizzolo, right?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q And was this the same Randy Pizzolo who had investors for a 900 house project in Florida?

MS. ARGENTIERI: Objection.

THE COURT: Is there only one Randy Pizzolo we're talking about here?

THE WITNESS: Yes, sir.

THE COURT: Next question.

BY MR. GOLTZER

Q And is it your testimony, sir, that Vincent Basciano

killed him because he hired a guy from a union?

MS. ARGENTIERI: Objection. It misstates the testimony.

THE COURT: Sustained.

Q Did it -- did you ever say to Randy Pizzolo, in words or substance, get rid of Melnich?

MS. ARGENTIERI: Objection.

THE COURT: You may answer.

A No, sir. It was not my business. If anybody ever told Randy that, that would be Vinny Basciano.

Q Do you know whether Vinny did?

A I'm not sure, sir.

Q So he could have?

A Vinny?

Q Yes.

A It could be possible.

Q Did you ever suggest to Vinny that he tell Randy get rid of Melnich?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did you have a fight with Mr. Basciano while you were in custody because he had told Joe Massino about you on tape?

A That was part of it, yes, sir.

Q That was part of the reason that you decided to cooperate?

MS. ARGENTIERI: Objection as to what was part of the reason.

THE COURT: Sustained.

BY MR. GOLTZER

Q The fact that you were mentioned on a tape recorder to Joe Massino made you very angry at Vincent Basciano?

A No, that's incorrect. You're giving false statements to me.

Q Oh, I'm a liar?

MS. ARGENTIERI: Objection.

THE COURT: Next question.

Q At the time that you were fighting the case, were you upset with Basciano because he told another individual that you killed somebody?

A Of course. Yes, I was.

Q Is that why you cooperated?

A That's one of my reasons, sir.

Q Was another one -- well, did you know a man named Joe Marrone?

A Yes, sir.

Q Joe Marrone was a friend of yours?

A Yes, sir, that's correct. He was going out with my cousin.

Q Nancy Pipallo?

A Yes, sir, that's correct.

Q And how long had he been going out with Nancy?
A For years.
Q And he was friendly with your cousin Don Amarosa?
MS. ARGENTIERI: Objection.
A That's incorrect.
Q Did he know Don Amarosa if you know?
MS. ARGENTIERI: Objection to the name.
THE COURT: Sustained.
Q Do you have a cousin who you lied about guns for?
A Yes, sir, I did.
Q What's his name?
A Matthew Amaroso.
Q I beg your pardon. Matthew Amaroso. Did he know Joe Marrone?
A Yes, sir.
Q Did the three of you go out together?
A I don't recall if we did. We might have.
(Continued on next page.)

BY MR. GOLTZER:

Q Did Joe Barone ever visit you with Putman County jail?

A Yes, sir, he did.

Q That was while you were a confidential informant?

MS. ARGENTIERI: Objection to the term confidential informant.

THE COURT: Sustained.

Q Cooperating witness?

A That's when I finally decided I would be a cooperating witness.

Q Because you were a cooperating witness you were in the Putnam County jail under a false name?

MS. ARGENTIERI: Objection; relevance.

THE COURT: Sustained.

Q It was part of your security to be --

THE COURT: Sustained.

Q And Joe Barone visited you in the jail on two occasions; is that right?

A I don't know if it was two. He might have visited me more times, sir.

Q On one occasion he came with Matthew?

A Yes, sir.

Q And one occasion he came with a woman?

A I think he came more than one occasion with a woman.

Q You confided to Joe Barone that you were cooperating?

A I told Joe Barone I would be cooperating, yes, sir.
Q In fact, you were crying during the conversation?
MS. ARGENTIERI: Objection; relevance.
THE COURT: Sustained.
Q Did you tell Joe Barone that you were cooperating because you are -- the mother of your child was not getting enough money?
A I was actually getting robbed, so I might have told Joel. I didn't say the mother of my child wasn't getting enough money. Part of the reason was Vinny Basciano's wife, his son, I was getting robbed.
Q You weren't getting as much money as you thought you were entitled?
A I wasn't getting really anything.
Q You told Joe Barone that's why you cooperated?
A That was one of the reasons.
Q You told Joe Barone I don't want to do this but I have to do it. My people aren't getting enough money?
A No, sir.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you discuss a fellow by the name Robert Marshal with Joe Barone?
A No, sir.
Q How about Willie Marshal?

A I don't recall, sir.
Q Wasn't Willie Marshal an informant on whose head there was a price?
MS. ARGENTIERI: Objection; relevance.
THE COURT: Sustained.
Q Did you ever discuss killing Willie Marshal with Joe Barone?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did Joe Barone ask you whether you had told the government about him?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you tell Joe Barone -- did you commit crimes with Joe Barone?
MS. ARGENTIERI: Objection. Object to the entire line of questioning.
MR. GOLTZER: Can we have a side-bar?
THE COURT: No. Sustained. Next question.
Q It was Joe Barone who you asked to kill Michael Mancuso?
A No, sir.
Q Did you know when you were speaking to Joe Barone and he was dating will Nancy Pipilo that he was a confidential source for the FBI?
MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did you learn that Joe Barone was a confidential source for the FBI?

MS. ARGENTIERI: Objection, Judge. Can we have a side-bar?

THE COURT: Sustained. Next subject.

Q You cared about Matthew Amoroso?

A Yes, he was my cousin.

Q You were close to him?

A Yes, sir.

Q You had a meeting with the government before you ever proffered; isn't that correct?

A Yes, sir, that's correct.

Q In fact, you had two meetings with the government before you ever proffered?

A Yes, sir, that's correct.

Q One was on November 21st, 2005?

A I don't know the actual date, sir.

Q Second one was in December 2005?

A Again, I don't know the actual date.

Q Did you ask for a meeting or did the government?

A I had asked for the meeting, sir.

Q How did you do that?

MS. ARGENTIERI: Objection; relevance.

THE COURT: Sustained.

Q What was the purpose of the meeting that you asked for?
A I wanted to hear my options if I became a cooperating witness for the government and what I could expect.
Q Who did you meet with?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you meet with the government?
A Yes, sir.
Q Did you make demands of the government?
A I asked for certain things, yes, sir.
Q What did you ask for?
A I wanted to get bail, I wanted to be released immediately.
Q You didn't like being in custody?
A No. I felt it would be best if I am cooperating for me to be released and get my family out of the neighborhood.
Q Did you tell the government that you would like your family out of the neighborhood?
A Yes, I did.
Q Weren't you told that if you cooperated the government could arrange to have your family relocated if it was necessary?
MS. ARGENTIERI: Objection.
THE COURT: Sustained. What the government said is out of bounds. Let's go.

Q You said you wanted your family relocated?
A If I became a cooperating witness, that's why I wanted to get bail. They know my family wouldn't want to move without me.
Q Your primary consideration wasn't getting yourself out of jail?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Was your primary consideration getting yourself out of jail?
A My concern was to get myself out of jail and the safety of my family.
Q Were you still under the possibility of death penalty authorization from the Attorney General of the United States?
A At that point in time when I first sat down with the government I wasn't in any type of cooperation agreement; nor did I debrief on anything about my criminal activities in the organized crime family.
Q Was the Attorney General of the United States still considering whether to ask them to prosecute under capital case, if you know?
A I know at this point in time I was still facing the death penalty, but I wasn't a cooperating witness with the government; nor did I give them any information about my criminal activity in the Bonanno Crime Family.

Q You just told them you wanted to get out on bail and then you would proffer to them?
A Basically, I was looking to get out on bail.
Q When you met in December with the government what was discussed by you as opposed to the government -- just you?
A That second meeting was basically set up so I could see my fiancee Anjanette Roman at this time. So because for that whole year I had no contact with her, I couldn't speak to her over the phone, nor could she come and visit me, so I wanted let her know that I was thinking about cooperating with the government and break it to her because she had just given birth to my son who was, maybe, about six months old at the time.
Q Were you forbidden from calling Anjanette Roman for approximately one year you'd been in custody?
A Yes, I was.
Q Was she not on your visiting list?
A No, she was not, sir.
Q You missed her?
A Excuse me?
Q You missed her?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q It was arranged that you would meet with Anjanette Roman in December of 2005?

A During that second meeting it was arranged that I could see her face-to-face and let letter know what I was thinking about doing as far as becoming a cooperating witness for the government.

Q How did you arrange to have a face-to-face meeting with Anjanette Roman?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q How was it arranged if, you know, to have a face-to-face meeting with Anjanette Roman?

MS. ARGENTIERI: Objection; relevance.

THE COURT: Sustained.

Q Did the government provide you the benefit of a face-to-face meeting with Anjanette Roman?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Where did you meet with Anjanette Roman?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Did you meet with Anjanette Roman?

A Yes, I did.

Q For how long?

A Conversation might have been anywhere from 15 mines to half hour.

Q In private?

A No, sir.
Q Was anyone else present?
A Yes, sir.
Q Who was present?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You and she discussed the possibility of your cooperating?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q After the meeting you decided to cooperate?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you make any demands of the government that Anjanette Roman or request of the government, I should say, that Anjanette Roman receive money?
A As far as request or demands, I'm not sure, but the one point when I became a cooperating witness the government felt it would be best to get her out of the neighborhood -- her and my child, and relocate her.
Q Did that happen, if you know?
A Yes, it did happen.
Q Once you began to cooperate were you able to have regular phone conversations with Anjanette Roman?
A Yes, sir.

Q Once you began to cooperate were you able to see Anjanette Roman?
A No, sir. Very rarely because she relocated her and also, my cousin Matthew Amoroso had to relocate.
Q When you say rare, does that mean there were times when you did see her?
A Yes, on rare occasions.
Q After you began to cooperate with the government were you able to see your child by Ms. Roman?
A To this day -- my child is going to be six years old in July, and rough estimate I've seen him about 15 times in his whole life.
Q You hope to live with him someday?
A Someday, of course, that's why I cooperated with the government.
Q You cooperated with the government in the hopes that you would be getting free?
A One day, yes. That's correct.
Q In January of two 2006 you made a decision to start the cooperation process?
A Yes, sir, that's correct.
Q You had a lawyer to assist you?
A Yes, sir, that's also correct.
Q Prior to engaging in the process did you try to learn something about it?

MS. ARGENTIERI: Objection.

THE COURT: I'm sorry. About it?

Q Prior to engaging in the proffering and cooperation process did you try to learn what was coming to you?

THE COURT: Is there an objection?

MS. ARGENTIERI: Yes.

THE COURT: Sustained.

Q You had a meeting and you signed an agreement for a proffer?

MS. ARGENTIERI: Objection. Misstates.

THE COURT: Sustained.

Q Did you have in January 2006 a proffer?

A When I decided to cooperate nothing at that point could be set in stone because I had the death penalty over my head, but once I made that step that I would cooperate, I fully disclosed everything to the government with the hop that the depth penalty would be lifted off of me and if the death --if the Attorney General decided not to lift the death penalty that meant I could not cooperate with the government, so I actually put myself in a worse position because now I had given the government all the information against me on the crimes I had committed.

Q Let's focus on January of 2006, all right?

A Yes, sir.

Q The death penalty was still over your head?

A Yes, sir, that's correct.
Q You didn't want to be subjected to the death penalty?
MS. ARGENTIERI: Objection.
THE COURT: You may answer.
A No, no, I did not.
Q And you attempted to provide the government with information?
MS. ARGENTIERI: Objection to attempted.
THE COURT: Sustained as to attempted.
Q Did you provide the government with information with the expectation or hope it would help removing the death penalty from over your head?
MS. ARGENTIERI: Objection.
THE COURT: You may answer.
A I provided the government information because I decided to become a cooperating witness for the government.
Q And you knew that in order to become a cooperating witness with the government you had to go through a debriefing process?
A Yes, sir.
Q And you knew that before you could become a cooperating witness with the government the death penalty had to be lifted?
A Yes, sir, that's correct.
Q And you knew that the office of the prosecutor for the

Eastern District of New York would be evaluating the information you gave them?
A Yes, sir, that's correct.
Q You knew that the Attorney General -- that the Office of the Eastern District could make a recommendation to the Attorney General?
A Yes, sir, that's correct.
Q And you knew that it was absolutely critical that in your providing information to the government you tell them the truth?
A Yes, sir, that's correct.
Q Because you knew that if they caught you lying you couldn't cooperate?
A I knew all this after my first proffer session with the government. That's when I found all this out. Yes, sir.
Q You never learned that before your first proffer session?
A Not -- I was specifically instructed after my first proffer session when I tried covering up for my cousin. I didn't want my cousin to get in trouble. That's when my attorney advised me that I could not do that. I would have to tell the truth of everything.
Q Did anyone tell you in words or substance before your first proffer session not to lie?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.

Q Did you believe that at the first proffer session you had the right to lie?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

A At the first --

Q At the first proffer session you did lie?

A Yes, sir, that's correct.

Q You knew you were lying?

A Not about myself, but about my cousin, yes, sir.

Q You had given your cousin a bag of guns?

A Yes, sir, that's correct.

Q In that bag were automatic weapons?

A Yes, sir, that's correct.

Q You had given your cousin instructions to take those weapons someplace?

A I told my cousin to hold the bag.

Q You knew that you were asking your cousin to commit a crime?

A Yes, sir.

Q You knew that the crime you were asking your cousin to commit was a felony?

A At the time I wasn't thinking of it like that.

Q You knew it wasn't the right thing to do?

A At the time, again, I'm a criminal. I was in the Bonanno Crime Family, so you don't really care about others.

Q When did you start caring about others?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Had you ever started caring about anybody about yourself?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q So you were disregarding you are cousin's welfare by telling him to commit a serious crime when you asked him to hold the bag of guns?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q So you sat across from United States -- Assistant United States Attorney at the first proffer session, right?
A Yes, sir.
Q You sat across from an agent?
A Yes, sir.
Q Or more than one?
A Yes, sir.
Q And your lawyer was present?
A I think so, yes, sir.
Q And you lied?
A I lied about giving my cousin a bag of guns, yes, sir.
Q How do we know you didn't lie about anything else?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.

Q And then you tried to correct the lie?
A I decided to tell -- based on what my attorney told me I was told just tell them the truth and we will work it out from there.
Q And then the proffering process continued?
A Yes, sir, that's correct.
Q You signed a cooperation agreement?
A After the Attorney General finally waived the death penalty off of me, yes, sir.
Q So the death penalty is off of you as you sit here today?
A Yes, sir. That's correct.

THE COURT: Okay. Let me just give a limiting instruction to the jury.

Evidence, what we call extrinsic, statements such as the issue of the guns, may be admitted for the purpose of impeaching the witness as to his truthfulness and not as to truth of the matter asserted. So you can only utilize such testimony to ascertain you views as to the witness' truthfulness.

Go ahead.

MR. GLOTZNER: Thank you, Judge.

Q And then you negotiated with the assistance of your lawyer a provision in your cooperation that you would not have had to give evidence against your cousin Matthew for those guns?

A Only to those guns, yes, sir.
Q That request was granted?
A Only to those guns, but I could testify against other criminal activities he was involved in.
Q And the request to immunize him for the guns was granted?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q The request that you never have to testify against him concerning the guns was granted?
MS. ARGENTIERI: Objection.
THE COURT: Overruled. You may answer.
A Just the guns. That's correct, sir.
Q Had you ever testified against your cousin anywhere?
A No, sir, I have not.
Q And how long have you been a cooperator?
A It's, approximately, five and a half years now.
Q Do you have any indication that you will be testifying against your cousin?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
MR. GLOTZER: May I have a moment, Your Honor?
THE COURT: Surely.
MR. GLOTZNER: This process may shorten my cross, so bear would me.
THE COURT: Very well.

Q At the November meeting you were charged with murder, you were then charged with the murder of Randy Pizzolo?
A What meeting are we talking about?
Q November 21, 2005?
A Which --
THE COURT: I am sorry. Can you be -- there are a lot of dates, so be as specific as to what the nature of the meeting was.
Q By way of background, Mr. Cicale, you gave your first formal proffer for the government January 2006?
A Yes, sir, that's correct.
Q Prior to that there were two meetings with the government at your request?
A Yes, sir.
Q The first meeting was for you to help ask some questions of the government about your options for cooperating?
A I wanted to find out basically what I could expect, what would happen, yes, sir.
Q And the second meeting in December had to do with your meeting Anjanette Roman?
A Yes, sir, that's correct.
Q And having discussions with her about cooperation?
A Yes, sir, that's correct.
Q Let's back up to that first meeting in November. Okay.
A Yes, sir.

Q That's the one where you were going to explore your options?
A I was going in to see way I would could expect if I became a cooperating witness, you know, what's going to happen basically.
Q Did you learn at the first meeting that you were facing possible new charges on the Santoro murder?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Did you learn or did you ask -- did you learn whether you were facing possible death penalty on the Santoro charge that might be lodged against you?
MS. ARGENTIERI: Objection.
THE COURT: Sustain the objection.
Q Are you able, without me asking the substance of what happened, are you able today in 2001 to remember what it was that was said between you and the government -- without telling us what it was -- are you able to remember what was said at that November meeting?
A The exact words, no, sir.
Q Not the substance, just --
A Somewhat of it, yes, sir.
Q Were you asked this question and did you give this answer under oath, referring to 3500 85B, as in boy, 1399 is the page, lines 17 through 24 -- actually line 17 through 24 --

MR. GOLTZER: Strictly on the impeachment issue, Judge.

MS. ARGENTIERI: Judge, is not in the --

MR. GLOTZER: I could do a different way.

THE COURT: Why don't you do it a different way because I'm not allowing that.

Q You testified at other trials?

A Yes, sir, that's correct.

Q In fact, you testified as part of your cooperation, three different trials?

A Yes, that's correct.

Q And at those trials you've been asked questions about meetings that you had at various times and places?

A Could you specify these meetings?

Q Were you asked at one of the trials whether you remembered a particular conversation that you had at that November meeting?

A I don't know, sir.

Q Did you ever state under oath that you didn't remember something about that November meeting?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q You testified yesterday that you were the subject of a joke played on you by Mr. Basciano?

MS. ARGENTIERI: Objection to the term joke.

THE COURT: Sustained.

Q Were you beeped to come somewhere will?

MS. ARGENTIERI: Objection; vague.

MR. GLOTZER: I don't have a date.

Q But did you testify yesterday about the beep to go somewhere by Mr. Basciano because there was a problem?

A Yes, sir.

Q And you ran there right within 15 or 20 minutes?

A Excuse me. Are we talking about the time when Mr. Basciano and Mr. Indelicato tested me.

Q Correct?

A Yes, sir, I got there very quick.

Q You got there very quick?

A Yes, sir, that's correct.

Q And they told you it wasn't real, right, it wasn't a problem.

A Yes, sir, that's correct.

Q They were testing you?

A They were betting to see how fast I would get down there or if I would respond.

Q You said to them what would have happened if I brought a gun?

A Yes, sir.

Q Did you get an answer?

A I did but I don't recall.

Q Well, did either one of them tell you that if you brought a gun to help them out you'd be killed?
A No, sir, absolutely not.
Q You went to Randy Pizzolo to get his side of the story about an incident that took place in Nap Sonoma; is that correct?
A Which incident are we talking about, sir?
Q When he allegedly brought a gun there?
A Again, you're being vague about it.
Q You indicated that Joe C (ph) said that Randy threatened the Paulie Spina with a gun?
A Yes, sir, that's correct.
Q You wanted to find out whether that was true?
A I wanted to find out what actually happened. I wanted to hear Randy's side of the story.
Q And Randy gave you his side of the story?
A Yes, sir, that's correct.
Q And Randy told you that, in fact, he had not threatened Spina with a gun?
A Yes, sir, that's correct.
Q Randy told you that he had gotten a call from Paulie Spina?
A Yes, sir, that's correct.
Q Randy told you it was his understanding that there was a problem with Paulie Spina?

A Yes, sir, that's correct. That's what Randy interpreted from the phone call that Paul Spina sent to him -- gave him.
Q And Randy told you that because he thought Paulie Spina was having a problem he left an important family event, right?
A The event was over.
Q What was the event?
A The event was his wife Roxanne was having a baby shower and they actually were at the house. The event was over.
Q He left aftermath of his wife's baby shower, he told you, to help Paulie Spina?
A He told me he left his house to go assist Paulie Spina because Randy thought Paulie Spina was having a problem. That is why Randy brought a gun to Napa Sonoma.
Q And you believed him?
A Yes, I did.
Q And you told Vinny Basciano you believed him?
A Yes, sir, I did.
Q And you heard from Randy Pizzolo that -- before he ever went into the restaurant he gave Paulie the gun?
A No, sir, that's incorrect.
Q Did you ever hear that before Randy ever went into the Napa Sonoma restaurant he handed Paulie Spina the gun?
A No, sir.
Randy informed me that he went in the Napa Sonoma and after he informed of Paulie about what's going on, where's

the problem, Paulie informed Randy there is no problem, I just wanted to speak to you, and then Randy told Paulie you made me bring a gun with me, and that's when Randy gave Paulie the gun. They were already in the restaurant.

Q And the gun was taken away and put somewhere?

A I was told Paulie Spina wrapped the gun in a napkin and put it behind the bar.

Q Did you ever try to find out who else was there when it happened?

A No, sir, I did not.

Q Did you ever discuss this incident with Sal Oliveri (ph) or Sal the plumber?

A No, sir, I didn't know that gentleman.

Q Did you have any reason to disbelieve Randy?

A No, because Randy had told me all the other stuff that they said Randy did about being the only killer in the Bonanno Crime Family, being a Navy Seal, he's the only killer, why didn't we give the hit to him. Randy did admit to me that he said that, so I had no reason not believe Randy when he told me the story about the gun -- the reason why he brought the gun.

Q So as far as you were concerned, Randy Pizzolo had told you everything that happened in the restaurant?

A As far as I'm concerned Randy addressed all the issues that I brought to him in the restaurant that was brought to my

attention.
Q And you did believe him?
A Yes, I did.
Q When in relation to the $360,000 finder's fee did this conversation with Randy about Napa Sonoma take place?
A You are losing me, sir.
Q Randy Pizzolo was around you?
A Yes, sir, that's correct.
Q He was not a made member?
A He was an associate. That's correct, sir.
Q Did you know that Basciano had proposed him to Joe Massino for induction?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Randy was committing illegal acts that you knew about while he was around you?
A Yes, sir, that's correct.
Q And Randy was engaged in the legitimate business activities while he was around you?
A Yes, sir, that's correct.
Q Randy told you that he had a number of legitimate businesses around him?
A Yes, sir, that's correct.
Q And Randy went in your crew after he had been with Johnny Palazollo and Joe C Junior?

A That's incorrect.
Q What would be correct where had he been before he got to you?
A Randy Pizzolo was with John.
Q With Vinny's crew?
THE COURT: I am sorry. You asked two questions. Let's start with the first question.
Q Did you know that Randy had been around Palazzolo?
A Yes, sir, it was brought to my attention.
Q Did you know that Randy had been around Joe C?
A No, sir, I did not. I was not aware of that.
Q You understand my question to be incorrect, so I'll withdraw it.
Did you know that Randy went to Vinny's crew?
MS. ARGENTIERI: Objection; misstates the testimony.
THE COURT: No, it's a question. You may answer the question.
A Do I know that Randy went to Vinny's crew is the question?
Q Yes.
A No, Randy went to my crew.
Q Okay. So Randy went from -- Palazzolo got arrested?
A Yes, sir, that's correct.
Q Then Randy went to you?
A No that's incorrect.

Q Where did he go?
A Randy went to Tony -- Tough Tony who was a captain in the Genovese Crime Family.
Q Then he went to you?
A No, sir, that's incorrect.
Q Where did he go?
A After Tough Tony, Randy went to Jerry Asaro who is a captain in the Bonanno Crime Family.
Q When did he get to you.
THE COURT: Be more specific.
Q At what time of the year 2004 did Randy get to you?
A It was sometime in the beginning of 2004.
Q Was it about the same time Vinny Basciano got the message from Joe Massino to take the reins of the family?
A No. I would say it was after.
Q How much after?
A For me to recall that, I don't know.
Q Is it fair to say that Randy was around Vinny for a relatively short period of time?
A Randy was with me.
Q And because he was with you he was actually your responsibility?
A Yes, sir, that's correct.
Q So if Randy was out of line that was a reflection on you?
A And reflection on Vinny.

Q If Randy was out of line was that a reflection on you?
A And Vinny also at that time. When Randy was working on the jobs it was a reflection on both us of us.
Q Randy began to work on the jobs in the summer of 2003?
A Yes, that's correct.
Q Prior to the time that Randy began to work on the jobs in the summer of 2004, if he messed up it was a reflection you?
A Myself and Vinny Basciano because Vinny Basciano had told me -- informed me to let Randy know this that is his last stop and he don't want him to go anywhere else after this stop, so make sure he conducts himself properly because Randy Pizzolo was not going to embarrass us.
Q In fact, he conducted himself quite properly?
A In the beginning, yes, he did, sir.
Q And in fact, he conducted himself quite properly until he began to work on the Basciano Schurz Avenue project in the summer of 2004?
MS. ARGENTIERI: Objection; misstates the testimony.
Q Didn't he --
THE COURT: Sustained.
Q Did he conduct himself properly until he began to work on the Schurz Avenue property?
A Properly in what context because there were different things that were happening, so sometimes there would be mishaps, you know, sometimes he is conducting himself

properly, so I don't know what you getting at or what area you want me to testify to.

Q Did he conduct himself well enough so you said to Vinny give him a shot on the property?

A Yes, that was the first project. That was Wenner Avenue in the Bronx.

Q And Wenner Avenue project went well?

A Yes it did. It was excellent.

Q Schurz Avenue met the deadline?

A Met the deadline, the excavation was according to foundation on Schurz Avenue for 15 houses.

Q Then he brought you the steel company after that?

A I don't know that was the exact order as far as other things happening in between but at some point of Vinny Basciano was involved in Robert Donato and putting up a ten story building and they are taking bids on steel contractors to put -- to erect the building.

Q Last thing Randy was involved in before he died was getting new investors to build 900 houses?

A No, I think that was before the steel company, sir.

Q The steel company was the last thing he was involved in?

A It might have been. Again, there might be some other things also. I'm not sure.

Q The steel company was going on shortly before Randy died?

MS. ARGENTIERI: Objection.

Q Is that true?

THE COURT: You may answer.

A That was one of the last things, I would say to the best of my recollection.

Q Under your cooperation agreement you were promised not to commit any new crimes?

A Yes, sir, that's correct.

Q Before I get to that, after Mr. Basciano was arrested you collected money for him?

A Yes, sir, I did.

Q You gave money to his wife?

A Yes, sir, I did.

Q He trusted you to do that?

A Yes, sir, he did.

Q He asked you to do that?

A Yes, sir, he did.

Q Did that -- some of that money come from gambling spots?

A Weekly monies I was giving her. Yes, it came from number of locations.

Q Did some of that money come from sports betting?

A If we had a winning week, yes, it did.

Q Did some of that money come from the interest on loans?

A Yes, sir, it was loans that were out to people in the crime family. That's correct.

Q Vinny Basciano trusted you with his book, if you will,

his loan book?
A Vinny Basciano trusted me to collect all the monies that were coming to him and pass it on to his wife and to his girlfriend Debbie Kalb.
Q Vincent Basciano, as far as you knew from him as the acting boss of the family, prior to his arrest had extensive interests in the street?
MS. ARGENTIERI: Objection.
Q Financial interests in the street?
THE COURT: Sustained.
Q You knew that he had financial interests in the street?
A Yes, sir.
Q These consisted in part of a number of gambling spots?
A Yes, sir.
Q He told you where every one of these spots was?
A No, sir, I didn't know where any of the spots were.
Q Did he tell you who was running it?
A Yes, I knew because I was making collections with his brother Tommy.
Q He wanted you to continue making the collections after he was in jail?
A In fact, any time Vinny Basciano got arrested nothing skipped a beat. Yes, sir.
Q And nothing skipped a beat, right?
A When I was out there, no, nothing skipped a beat.

Everything Vinny wanted done was done.
Q And he wanted you to take care of a house that was in your name in which his girlfriend lived?
A Yes, that's correct.
Q He wanted you to pay the mortgage payments?
A After I received the money from Sally Daz, the joker-polka business, yes, sir, that's what I did with the monies.
Q He wanted to you make sure that his wife had money to pay for her home?
A His wife was receiving money every week so --
Q So Vinny Basciano asked you to take care of his family?
A Financially, yes, all the monies that Vinny Basciano had coming in the street, make sure his family received.
Q Vinny Basciano told you he was depending on you to take care of his family and loved ones financially, didn't he?
A Not in those words, but he let me -- trusted to make sure his family received all his illegal monies.
Q Did Vinny Basciano express a concern to you?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
MR. GOLTZER: I'm sorry. I didn't ask the question.
THE COURT: Yes, but the first part of it is sustained. Ask another question.
Q You wouldn't tell Michael Mancuso what financial

interests Basciano had in the street, would you?
A No, sir, I did not.
Q And that was at Mr. Basciano's request?
A I'm not sure if that it was at his request or not, but I felt it wasn't Michael Mancuso's business to know all the whereabouts of what's going on, and the income that Vinny Basciano was receiving.
Q Is it then the case that you took it upon yourself not to tell Michael Mancuso where Vinny's financial interests lay?
A Again, I felt it wasn't Michael Mancuso's business because if Vinny Basciano wanted him to know, then Vinny Basciano had discussions with myself and Michael about who would have the last word in the street, if Vinny wanted Michael to know he would have told him at that time.
Q The question is whether you took it upon yourself not to tell Michael Mancuso about Vinny's financial interests on the street?
MS. ARGENTIERI: Objection; answered.
THE COURT: Sustained. That was his answer. Next question.
Q Is it accurate to say that you were never specifically instructed by Basciano to do that?
A I was protecting Vinny Basciano's interests on the street by not divulging his information that he didn't want divulged to Michael Mancuso.

Q Without a specific instruction?

MS. ARGENTIERI: Objection.

THE COURT; you may answer.

A Again, Vinny always made sure if he ever got arrested, like he told Michael and myself, Michael had the last word on the street, Dominick could collect all the monies, so Vinny wanted Michael to know if Dominick ever gets arrested pick up these monies he would have told me. So I felt Vinny didn't want Michael to know, so I did not say anything to Michael. Protecting Vinny Basciano's interests.

Q And that was based on your feeling of what you believed Vinny would want you to do?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q That was based on your feeling as opposed to a specific instruction?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Were you getting anything in a financial way from Vinny Basciano's financial interests on the street?

MS. ARGENTIERI: Objection.

Q After he was arrested?

A Could you explain by "getting anything"? I don't --

Q Were you getting a piece of the action from Basciano 's spots after he was arrested?

A No, sir, I was not.
Q Did you have any financial interests in any of Basciano's spots after he was arrested.
MS. ARGENTIERI: Objection; vague. What spots?
THE COURT: Well, be more specific.
Q Joker-poker machines, was any of that yours after Vinny was arrested?
A No, sir, it was not.
Q The gambling spots was any of that yours?
A Actually, sir, with the Joker-Poker business, no -- I'm sorry -- with the gambling spot business, no, I didn't receive anything, but I was giving Anthony Donato's -- I think it was his sister $1,000 a week out of that money after Vinny Basciano was arrested.
Q So Vinny asked you to take care of Anthony Donato's sister?
MS. ARGENTIERI: Objection.
THE COURT: You can answer the question.
A That went to Anthony's Donato's wife.
Q You said you gave Vinny Basciano a million dollars?
A If you repeat the question that was asked I could answer it more accurately.
Q You also -- did you say that you owed people a million dollars?
A Again, if you repeat the question that I was asked I

could answer it accurately the way I did yesterday, sir.
Q Are you worth nothing?
A Right now I am negative. I owe money.
Q How much?
A I would say well over a million dollars.
Q How much over a million?
A I don't know.
Q To whom do you owe the money?
A Investors, family members, a building that I was in state court with and an appellate judge just ruled that -- they found that the building was extorted from me, and they rendered the title back over to me -- to the company. That's over a million dollars in debt from the bank. I have a lot of debt over my head because of my cooperation.
Q Do you have tax lien?
A I don't know if I do or don't. I don't receive much mail where I'm at.
Q Have you engaged in negotiations with the Internal Revenue Service?
A Again, I had my attorney try to contact the IRS and actually I think even the FBI agents tried contacting them and there was no response.
Q So the IRS isn't answering you?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.

Q Have you tried to contact the IRS to give them some money?
A They were harassing.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
MR. GOLTZER: May I have a moment, Judge.
THE COURT: Yes, you may.
Q There was a time when you had a roommate by the name of Kenny Wartoba; is that right?
A I have no idea what you are talking about, sir.
Q Did you know somebody name Kenny Wartoba when you were in general population at the lockup?
A Which lockup, sir?
Q Any lockup. Do you know somebody named Ken that you lived with?
A Again you have to refresh my memory with the time and place.
Q Well, in the MDC, Metropolitan Detention Center, you were there, right?
A Yes, sir, I was.
Q And when was it that you were there?
A In January of 2005.
Q For one month or more than a month?
A I was there until I became a cooperating witness with the government and that was 2006.

Q You were there for about a year?
A Yes, sir.
Q And were you in general population?
A No, at first I was in segregation, sir.
Q That's a process by which you are brought into the institution?
A No. That was a process that was -- usually you go straight to general population. In my case they put me straight in segregation. I had no phone communications, nor did I have any visits, and we had to go to the judge to have that order lifted and me put into general population. Took about three to four months for me to be released from that status.
Q So January, February, March, April, approximately, you were not in general population?
A Approximately, that's correct.
Q And then is that particular status was lifted correct?
A Yes, the Judge had lifted that order from the government.
Q And then you went into general population?
A Yes, sir, that's correct. I was placed into general population.
Q General population is somewhat different?
A Yes, sir, it is.
Q General population consists of a number of cells on a floor?

A Yes, sir, that's correct.
Q Sixty --
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You're locket in with a roommate at night in the MDC when you are in general population?
A Sometimes you have roommates, sometimes you don't.
MS. ARGENTIERI: Objection. Timeframe.
Q Did you have roommates during the time you were at MDC?
A To the best of my recollection, yes, I did.
Q Who were they, if you recall?
MS. ARGENTIERI: Objection; relevance.
THE COURT: Sustained.
Q Did you have a roommate by the name of Ken Wartoba?
A I didn't know any kid named Kenny Wartoba.
Q Did you have a roommate at a time when you had an illicit cell phone at the MDC?
A No, sir, I never had an illicit cell phone at the MDC.
Q Isn't it true, Mr. Cicale, that you had a roommate who you used to ask to charge your cell phone secretly behind the microwave oven in your general population floor?
MS. ARGENTIERI: Objection. Can we have an offer of proof?
MR. GOLTZER: Let's go to side bar, if we may.
(Continued on next page)

(The following took place at side bar)

MR. GLOTZNER: It is a good faith basis for the question. An affidavit, interviews that we have from an intimate by the name of Kenneth Wartoba, part of which I believe were filed under seal and he may asked for a subpoena or writ from Mr. Wartoba who indicated that during a substantial supplement period of time he was aware that Mr. Cicale had received a cell phone from an intimate who is now in Florence, Colorado by the name of Kenneth McGriff. We'd made efforts to contact Mr. McGriff.

THE COURT: Mr. McGriff is the one who gave an affidavit?

MR. GOLTZER: No.

THE COURT: Where does Mr. McGriff fit into this?

MR. GOLTZER: That is where he got the cell phone from.

THE COURT: He got the cell phone from McGriff.

MR. GOLTZER: Correct. Cicale got the cell phone from McGriff.

MS. ARGENTIERI: How does he know that?

MR. GOLTZER: He was his roommate. He saw him charge the phone when he was at the MDC.

MS. ARGENTIERI we have seen no affidavit.

MR. GOLTZER: I know you have not seen an affidavit.

MS. ARGENTIERI: I think we should have an

opportunity --

MR. GOLTZER: We are pulling it out. Maybe we can make a copy of it for the coordinator. It is being pulled out. Good time for a break?

THE COURT: No. I want to resolve this.

MS. MERKL: Do you have any documentation to support the claim that Mr. Wartoba was, in fact, his roommate? Do you have any documentation from BOP that he was, in fact, the roommate?

MS. ARGENTIERI: His name is not Kenneth. That would be the starting point.

MR. GOLTZER: They are telling me I used the wrong first name. I can ask him again. I am advised by Ms. Stafford that there is, in fact, a hearing before Judge Block in this building on the issue of a cell phones by Mr. McGriff and Judge block -- is it correct, there was a hearing?

THE COURT: I have the greatest respect for Judge Block and I allow him to run his own cases and I run mine.

MS. ARGENTIERI: I am asking if they found the prison records that show they're in the same -- or if they exist or if they have them.

MR. GLOTZER: The answer is, no, we have an affidavit from an inmate who claims this is a sworn affidavit.

MS. ARGENTIERI: I would like to say about this affidavit that it contains numerous inaccuracies, including

the identity of Mr. Cicale's girlfriend at the time who this person allegedly watched him call who he had just had a baby. It is the wrong girlfriend, the wrong name. This is totally unverified.

THE COURT: All right. Stop. The objection is sustained under 608(b).

(End of side-bar)

(Continued on next page)

(The following took place in open court)

THE COURT: All right. We are going to take a break. All rise for the jury.

(Whereupon, the jury exited)

THE COURT: All right. Everyone, may be seated.

We are going to let you just wait a minute. We're going to send the witness out as soon as we can.

Okay. The witness may stand down. Do not discuss your testimony with anyone. Everyone may be seated.

Mr. Goltzer, you don't have to go far.

MR. GOLTZER: It's been brought to my attention the first name I used was incorrect for which I apologize.

THE COURT: I already ruled on this.

MR. GOLTZER: I asking for leave to request that I could ask him whether he had a roommate named Andrew and if the answer is yes -- he said he didn't know anybody named Ken. It is probably a truthful answer because I used the wrong name.

THE COURT: Well, yes.

MS. ARGENTIERI: He was asked whether he had a legal use of a cell phone in the MDC and he said no. We move to have an entire line stricken and the jury be instructed to disregard it.

MR. GOLTZER: I have a good faith basis to question.

THE COURT: That affidavit is a good faith basis for

these questions?

MR. GOLTZER: It seems to me.

It's an affidavit from an intimate. I am not a finder of fact. The intimate said he had conversations on the cell phone with woman who was the mother of his child.

MS. ARGENTIERI: It means the woman --

THE COURT: Wait. Stop. Is there any independent corroboration that he shared a cell with whoever that is while he was at the MDC?

MR. GLOTZER: We will get the records, I guess.

THE COURT: This is the time that you bring it to me. Not you are going to get go get the records. This case is an 05 case. We've spent over four million dollars in lawyer defense lawyers, investigators, jury consultants, so don't tell me, sir, that we are going to get it now. I have signed everything that you have sent me, so it's not that you've been barred from it. I'm not going to start discovery at 4:00 p.m. on May 4th in the middle of the trial. It's not happening.

MR. GLOTZER: At the current time we have no independent documentation.

THE COURT: Fine. My decision stands and I will strike all that.

THE DEFENDANT: That's ineffective assistance of counsel on their part.

THE COURT: Would you tell your client to keep his

mouth shot in my presence. Tell your client to keep his mouth shut in my presence. He is not to address the Court in any manner, shape or form from now until we have a verdict. Do you understand that, Mr. Goltzer:

MR. GOLTZER: Yes.

THE DEFENDANT: It's a violation of the cooperation agreement. He had a cell phone.

THE COURT: The defendant is excused from the courtroom. We will take a ten-minute break.

(Court recessed)

(Continued on next page)

THE COURT: Everyone is present.

There are two applications that the court has received. One has to do with the defendant requesting an adverse inference instruction barring certain evidence having to do with original copies of log books from the MDC from November 19th, 2004, to December 1st, 2004, and defense has also asked for an evidentiary hearing to determine whether the government is negligent in the destruction of any documents which may have been destroyed.

What the court needs is answers to the following questions.

One question is whether there are copies of the logbooks? What copies were produced? Are they photocopies of the originals or something else? If they were produced, whether they're copies or if they're insufficient, why they're insufficient. Also, the remedy the defense is seeking, what is the instruction specifically they're requesting? You should provide me with a proposed instruction and also to indicate why the motion is timely, shouldn't that motion have been made before trial so the court could have shaped an adequate or appropriate remedy and I suppose, as part of this, I would like to hear whatever evidence the defense has as to what the standard is or should be for the maintenance of evidence as it applies to the BOP which is not a party to the case. I would like to have that provided to me by tomorrow

evening.

On the motion in limine from the government, same thing, timing-wise, Thursday. I would like the defense to address whether they intend to produce inconsistent statements under Rule 613(b) and if so how do they intend to comply with the requirements of 613(b) concerning which statements the defense intends to introduce which they claim are contradictory statements. I need to know what the statements are that are alleged to be contradictory and for what purpose the evidence will be admitted and why it's permissible. On the government's in limine motion, get the answer to that question as well.

If any of these issues regard testimony that may take place tomorrow, I'll need the submissions by tomorrow morning.

MR. GOLTZER: Very well. We'll get it all in.

THE COURT: Thank you very much. Let's bring in the witness, please.

MR. GOLTZER: I'm almost through, Judge.

THE COURT: Then we'll have to send the jury out. Isn't it correct the next witness is also a cooperator?

MR. DENNEHY: Yes, sir.

THE COURT: We'll follow our normal procedure.

MR. GOLTZER: Before I finish with the witness, may I have a few minutes with Mr. Basciano?

THE COURT: Yes, I said it would be possible at counsel's table. I'll put on the noise and you can speak to him for a couple of minutes. Let's not make it a long discussion, please. I have a jury. I would like to move on.

Also, the jury has sent me a note asking that we suspend at 5:50 each day because suspending at 6:00 o'clock tends to cause them problems with transportation. I thought that was perfectly reasonable, told my deputy to inform the jury that we would suspend by 5:50. Plan your questioning with that in mind, if you wish to do so.

MR. GOLTZER: If I knew how to plan my questioning time-wise, I would do that.

THE COURT: Very well.

The next witness, who is going to direct questions of the next witness?

MR. DENNEHY: I will.

THE COURT: How long is your questioning expected to go? Don't look at them. You can look at me.

MR. DENNEHY: I'll try by 5:50 but I don't think so. I'll try.

THE COURT: I'm not asking you to do anything in particular. I'm asking you how long you think it would take.

MR. DENNEHY: An hour and 15 minutes, whatever.

THE COURT: Maybe by the end of today, maybe by the beginning of tomorrow; is that right?

MR. DENNEHY: Correct.

(Witness enters courtroom.)

THE COURT: You want me to send the witness out while you speak?

MS. ARGENTIERI: No.

THE COURT: I wanted to make sure it was something that if the witness hears, it's not prejudicial.

MS. ARGENTIERI: Would you instruct them to disregard that line of questioning when the jury comes in? It was stricken during their not being in the courtroom, not in their presence.

THE COURT: All right.

On the question of the evidence, the logs, I would like to hear the government's response to that as well.

MS. ARGENTIERI: We understand.

(Jury enters courtroom)

THE COURT: Please be seated everyone.

Members of the jury, my deputy has advised me that the jury would like to suspend at 5:50 each evening. That's fine. I understand, perfectly reasonable. If I'm still going at 5:49, raise your hand, wave at me. I'll try to watch the clock. I might not be paying attention at that moment. That way we can suspend.

(Jury applauds.)

MR. GOLTZER: That's a first.

THE COURT: Certainly a first for me.

Members of the jury, the government has moved to strike the questions and answers that have just been provided for you before the break on the subject of the witness' roommate or cell mate at the MDC and some issue about a cell phone. All those questions and answers are stricken. You're to disregard them. You may continue, Mr. Goltzer.

Q Mr. Cicale, it was a rule in your crew, was it not, that when you beeped somebody, they had to respond?

A Yes, sir, it was.

Q That's a normal Mafia rule?

A It's a rule by Vincent Basciano.

Q A rule of the Mafia when a captain calls, you have to come?

A That's a rule, yes.

Q You were an official captain for some time prior to Mr. Pizzolo's death?

A Yes, that's correct.

Q You had the authority over him to make him appear any time, 24/7; is that correct?

A It includes the "him" we're talking about, sir?

Q Pizzolo.

A I had the authority to call him. Because of my authority, he should respond immediately.

Q At the end of October you could have called Randy Pizzolo

to meet you at an isolated spot somewhere?
A I could have called Randy to come meet me but Randy couldn't make it, he would punch in zeros.
Q So you could have then, if he punched in a zero, you could beep him to meet you the next day?
A I would wait until the next day and page him so I wouldn't get him confused.
Q You had the authority to change his meeting places?
A It wasn't authority. If I felt the meeting place was compromised or even if he brought to my attention, "Dominick I see a lot of law enforcement," I would change it.
Q You could as the captain of the crew with respect to any one of your people, tell them to meet you at a different location than the one that had previously been arranged?
A Anybody could change a location place.
Q The point is, Mr. Cicale, that any time you wanted to, you could have caused Randy Pizzolo to meet you or Ace Aiello at an isolated spot somewhere?
A Yes, sir; that's correct.
Q So that there was a hit out, an order to kill Mr. Pizzolo at the end of October of 2004, it was within your capabilities to cause his death within a matter of 48 hours?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You mentioned someone named Danny Boy Martino.

MS. ARGENTIERI: Objection.

MR. GOLTZER: On direct examination, Danny Boy.

THE COURT: Overruled.

A Are you talking about Donny Boy? Yes, sir.

Q To your knowledge he's alive?

A To the best of my knowledge; yes, sir.

Q You mentioned somebody by the name of Patty DeFilippo?

A Yes, sir; that's correct.

Q To your knowledge he's alive?

A Patty DeFilippo to my knowledge is incarcerated.

Q Mentioned somebody by the name of Salvatore Vitale?

A Yes, sir; that's correct.

Q To your knowledge, Salvatore Vitale is alive?

A To my knowledge, Salvatore Vitale is alive, in the Witness Protection Program.

Q You mentioned someone by the name of Harold Lane?

A Yes.

Q To your knowledge is Harold Lane alive?

A To the best of my knowledge, Harold Lane is alive.

Q After you became a cooperator, you were placed in a special unit for cooperators; is that correct?

A At what time, sir?

Q Were you at any time placed in a special unit for cooperators?

A Yes, I was.

Q When?
A It was some time in 2006.
Q Was that within the confines of the metropolitan area?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q While you were in that -- were you in one unit or more than one unit for cooperators, federal unit?
MS. ARGENTIERI: Objection as to time frame.
THE COURT: Sustained.
Why don't you take him through it, if you wish?
Q You began to proffer in January of 2006?
A Yes, sir; that's correct.
MS. ARGENTIERI: Objection.
MR. GOLTZER: Background.
THE COURT: Yes, that's fine. Go ahead.
Q You began to proffer in January of 2006?
THE COURT: The answer was "yes," right?
THE WITNESS: Yes.
Q The process continued for some time, the proffering?
A Yes.
MS. ARGENTIERI: Objection.
THE COURT: You may answer. Go ahead.
A Yes, sir; that's correct.
Q A period of time?
A Yes, sir; that's correct.

Q Then a cooperation agreement was entered between you and the United States Government?
A After the Attorney General waived the death penalty on me; yes, sir, I signed into a cooperation agreement with the federal government.
Q Do you happen to know the date upon which you entered into the cooperation agreement?
A It was some time in 2006.
Q Your cooperation agreement is in evidence and if I told you the date was February 13th, 2006, would you accept it?
A If that's what it says on the paper, yes, sir, I would at that time.
Q As of February 13th, 2006, you formally became a cooperator, cooperating witness with the United States Government?
A Yes, sir; that's correct.
Q As of that time you were going to be separated from codefendants?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Prior to the time you entered into a cooperation agreement, you were advised by the United States Attorney's Office not to give them information about what transpired at codefendant meetings, correct?
MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q After you entered into the cooperation agreement, did you go into a WITSEC facility?

A I went into a protective custody facility but no, it wasn't right after I entered into a cooperation agreement with the government.

Q When for the first time did you enter into a protective facility?

A It was some time in 2006. It was some time after my first trial that I testified in.

Q When would that have been, the summer?

A Again, it was some time in 2006.

Q There came a point for the first time in 2006 you entered into a WITSEC or a protective facility?

A Yes, sir, that is correct.

Q How long did you remain in that first facility?

A I'm not sure. Maybe six to nine months to the best of my recollection.

Q Was that the facility in which you had a workout partner named Chris?

A I don't recall having a workout partner named Chris, sir.

Q Did you ever hear the name Berte?

A Yes, sir, I did.

Q Was Berte a workout partner of yours?

A Yes, sir, at one time he was.

Q At what time was that, if you can place the year?
A That was some time, if I'm correct, 2007.
Q Was that in the same facility in which you were first placed?
A No, sir, it was not.
Q Were you ever in a facility with a guard by the name of Santomaggio, Marco Santomaggio?
A I heard the name, sir.
Q Did you hear the name in connection with a facility in which you had been placed?
A Yes, sir, I have.
Q Was that the first facility in which you were placed?
A Yes, sir; that's correct.
THE COURT: I'm sorry, is there an objection?
MS. ARGENTIERI: The time frame.
THE COURT: Let's get the time frame.
Q 2006?
A Yes, sir.
Q You stayed in that facility until some time in the beginning or the first half of 2007?
A Yes, sir; that's correct.
Q In that facility you were housed with other people who were in protective custody?
A Yes, sir; that's correct.
Q You knew that some of the other people who were in

protective custody were also, like yourself, cooperating witnesses?
A Yes, sir; that's correct.
Q In fact, you knew that Chris Berte who was your workout partner, had been the roommate of Joseph Massino?
MS. ARGENTIERI: Objection, misstates the term who Berte is.
THE COURT: Sustained.
Q Did you learn from Berte that he had been a roommate of Joseph Massino?
A I'm not sure if I knew Berte and Massino were roommates. That I'm not sure of.
Q Did you know or did you learn from Berte that he had also had been a roommate of Generoso Barbieri?
A Who?
Q Berte.
A Again, I'm not sure who his roommate was. I wasn't at the facility.
Q He was never your roommate?
A Who was never my roommate?
Q Berte.
A No, sir, he was not.
Q You just worked out with him?
A At a different facility; yes, sir, I did.
Q After you were in this first facility until some time in

2007?
A At the second facility that's where I work out with Berte.
Q But it was at the first facility you heard the name Marco Santomaggio?
A Yes, sir; that's correct.
Q That was at the MDC?
A No, sir, that's incorrect.
Q MCC?
A Yes, sir; that's correct.
Q It was at the MCC that you were lodged on a protective custody wing or floor?
A Yes, sir; that's correct.
Q From some time in 2006 to some time in 2007?
A Yes, sir; that's correct.
Q Did you refer to your fellow inmates on that floor by name?
A Some by name, some by initials.
Q Were you familiar with a gentleman by the name of CM, the initials CM?
A Yes, but I didn't refer to him by CM.
Q Did you refer to him as Carlos?
A No, sir, I did not.
Q What did you refer to him as, Dino?
A Dino Diablo.

Q Dino Diablo?
A That's the name he wants to be called, sir.
Q You knew that Dino Diablo -- Dino Diablo is devil, right?
A That's a translation; yes, sir.
Q In Spanish.
A Yes, I'm told.
Q As we're told.
A That's correct.
Q How long had you known Dino Diablo in this particular facility?
A I met Dino upon my arrival at the facility.
Q In 2006?
A Yes, sir; that's correct.
Q Is it accurate to say that you interacted with Dino Diablo up until some time in 2007?
A What do you mean by interacting, sir?
Q Spoke to him.
A At first, yes.
Q Did there come a time you stopped speaking to him?
A Yes, I started pulling back; that's correct, sir.
Q When did you start pulling back from Dino Diablo?
A I would say -- I'm really not sure. It might have been maybe a few months that I was at the institution.
Q Did you know a unit manager by the name of Eldridge?

A Yes, sir, I did.
Q Did you know a Bureau of Prisons official by the name of Gloria Black?
A Yes, sir, I did.
Q Did you ever discuss Marco Santomaggio with Dino Diablo?
A There was a discussion; yes, sir.
Q When was the discussion between yourself and Dino Diablo about Marco Santomaggio?
A I don't know exactly when the discussion was, but there was a discussion.
Q Did you also know somebody who was referred to as FS?
A Yes, sir.
Q Did you know his real name?
A Yes, sir.
Q What was it?
A Frank Saleme.
Q Did you know Dino Diablo's real name?
A I think it's Carlos Medina.
Q Did you know a lieutenant by the name of Shepherd in that particular unit?
A No, sir, I do not.
Q What conversation did you have about Dino Diablo, had with Dino Diablo about Marco Santomaggio?
A What I recall is Dino coming up to me and informing me that this officer, Santomaggio, was working in Vinny's unit

and he was also working in our unit in the PC unit. Dino asked me if I wanted Dino to find out any information about Vinny Basciano. I told Dino no, I don't want to know.

Q Is it accurate to say that informants or cooperating witnesses in this unit used to talk to each other about their cases?

A There's people that have conversation about the details of their cases; that's correct.

Q Is it also accurate to say that in this unit all of the inmates are in protective custody?

A Yes, sir; that's correct.

Q So that -- by the way, were you ever in a protective custody unit with other members of the Bonanno Crime Family?

MS. ARGENTIERI: Objection, relevance.

THE COURT: Sustained.

Q Were you able to discuss cases with other members of organized crime while you were in protective custody?

A I don't get the question, sir.

Q You were provided with discovery in connection with your case shortly after you were arrested?

A Yes, sir; that's correct.

Q That was at a time when you were fighting the case?

A Yes, sir; that's correct.

Q You were provided with, among other things, the tapes between Mr. Basciano, Tony Urso and Big Lou?

A Yes, sir, that's correct.
Q And Joe Cammarano?
A Yes, sir; that's correct.
Q An you were provided with tapes between Vincent Basciano that were made in December of 2004, correct?
A If that's the date of the tapes -- the Massino tapes you're talking about?
MS. ARGENTIERI: Objection.
Q Did you --
THE COURT: Sustained.
Q You have two Massino tapes --
THE COURT: The date.
MR. GOLTZER: I'll withdraw the question.
THE COURT: There was a plural you used.
MR. GOLTZER: I'll withdraw the question, correct the form.
Q You got both Massino tapes?
A Yes, sir, I did.
Q That was before you were ever charged with Santoro?
A I was never charged with Santoro. I informed the government that I was involved in the Santoro homicide.
Q Did you ever tell Basciano before you became a cooperator that you were told that you were going to be charged with Santoro and placed under the death penalty?
A I don't recall if I told him, sir.

Q Do you recall what he had told your lawyer to tell him?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Do you recall whether anybody told that to Basciano?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Could you have told Basciano that?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q You, in addition to the tapes we just discussed, you were provided with police forms?
A Pertaining to?
Q Charges against you.
MS. ARGENTIERI: Objection, date.
Q Were you provided with what are known as 302s?
A Not from the government, sir.
Q Who gave you 302s?
A Baldo Amato.
Q Baldo Amato is somebody who had been tried in this court?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Baldo Amato is somebody who gave you discovery in the nature of 302s?
A Yes, sir; that's correct.
Q 302s are forms prepared by the Federal Bureau of

Investigation?
A Yes, sir, that's what my understanding used to be.
Q 302s contain the results of investigations conducted by law enforcement, as you understand it?
A I understand 302s got notations on cooperating witnesses, their statements.
Q So, you received from Baldo Amato federal paperwork containing prior statements of cooperating witnesses?
A Yes, sir; that's correct.
Q You received the prior statements of cooperating witnesses that were not given to you by the United States Government?
A Yes, sir; that's correct.
Q Can you tell us which cooperating -- which witnesses -- you had cooperating statements for?
A I think it was all the cooperating witnesses who testified in the Joseph Massino trial.
Q Did you have the witness statements -- by the way, did you get these witness statements prior to the time you began to proffer in January of 2006?
A I received these witness statements some time in 2005.
Q Prior to the time that you began to proffer, you had Salvatore Vitale's statements to the United States Government?
A Yes, sir; that's correct.
Q Prior to the time that you began to proffer, you had

Goldie Leisenheimer's statements to the United States Government?
A To the best of my recollection, I think I would; yes, sir.
Q Prior to the time you began to proffer, you had Frankie Coppa's statements to the United States Government?
A To the best of my recollection, yes, I have.
Q Prior to the time that you cooperated you had statements of Frank Lino to the United States Government?
A To the best of my recollection; yes, I had.
Q Prior to the time you cooperated, you had the statements made to the United States Government by Big Lou Tartaglione?
A Again, to the best of my recollection, yes, I had.
Q To the best of your recollection, have I left out the names of any other cooperators whose witness statements you had -- Joey D'Amico?
A Yes, sir, it might have been.
Q Did I leave anybody out?
A The other cooperators I know of are Richie Cantarella, Jimmy the General.
Q Jimmy the General was somebody whose witness statements you had before you began to proffer?
A No. You asked me about cooperators. I don't know if I had -- I'm not sure but I had a bunch of them. I obtained them from Baldo Amato. Everybody in the building had them who

was on Bonanno cases, not just myself.
Q When you say everybody in the building had them who were on the Bonanno cases, can you provide us with the number of -- by the way, you're talking about defendants?
A Yes, sir.
Q You're talking about defendants who could become cooperators?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q When you went into the WITSEC unit, or the Protective Custody Unit, you still had these witness statements for the Joseph Massino trial?
A No, sir, that's incorrect.
Q What did you do with them?
A When I first became a cooperating witness for the government, I was transferred from MDC Brooklyn to Putnam County jail at which time all my property was sent home.
Q So, you took all of the witness statements that were given to the FBI by the cooperators in Joseph Massino's case and you sent them home?
A No, sir, I said all my property was sent home. I don't know if those papers were in that property or if they were left at the MDC Brooklyn but all my property was packed up and shipped out, shipped to the house. I don't know if those papers were included in the property.

Q But before those papers were shipped out or lost, you had read them?
A Yes, sir. I had read them and also the defendant had copies also.
Q You had listened to the tapes?
A Yes, sir, I have.
Q You spent many hours reading them?
A I basically just skimmed through them because nothing mentioned myself in those notes -- those debriefings.
Q When you went into the Protective Custody Unit, did you discuss the contents of those particular witness statements with any of the other cooperators with whom you were housed?
A No, sir, I did not.
Q Because that would have been inappropriate?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Dino Diablo worked in the kitchen, didn't he?
A Towards the end, yes, he did, sir.
Q Towards the end of April of 2007, right?
A I don't know the exact date, sir.
Q Is it true that at the end of April, 2007, you approached the inmate Dino Diablo with a plan to get you out on bail?
A No, sir, that's incorrect.
Q Is it true that at the end of April, 2007, you told inmate Dino Diablo that you knew he had credibility with the

U.S. Attorney's Office for the Eastern District of New York?
A No, sir, that's incorrect.
Q Is it true that at the end of April, 2007, you told Dino Diablo that if he told the government that he was approached by Santomaggio to kill you on behalf of Basciano, he would get a benefit and you would get bail?
A Absolutely not. That's incorrect.
Q Isn't it true that you tried to frame Vincent Basciano in a false murder plot so you could get bail?
A Absolutely not. That's incorrect.
Q Isn't it true that Dino Diablo said to you Santomaggio could lose his job?
A Absolutely not. That's incorrect.
Q Isn't it true that you said to Dino Diablo "fuck him"?
A No, sir, I did not.
Q You deny all of it?
A Yes, sir, I do. It's not true.
Q Isn't it true that after you had conversations with Dino Diablo about Marco Santomaggio, Marco Santomaggio left the unit for a couple of weeks?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Isn't it true that after these conversations when you learned that Dino Diablo wasn't going to do it, you started to make trouble for him in the kitchen?

MS. ARGENTIERI: Objection, a fact not in evidence.

THE COURT: Sustained.

Q Are you aware of the cases in which Dino Diablo cooperated and testified for the United States Government?

MS. ARGENTIERI: Objection, relevance.

THE COURT: Sustained.

Q Can you think of any reason why cooperator Dino Diablo would risk his cooperation agreement by lying about you?

MS. ARGENTIERI: Objection, calls for speculation.

THE COURT: Sustained.

MR. GOLTZER: I have no further questions. I want to discuss with my client.

THE COURT: Yes.

(Pause.)

MR. GOLTZER: Just a few more, your Honor.

THE COURT: Go ahead.

Q Did Vinny ever tell you that he proposed Randy Pizzolo?

THE COURT: Sustained.

Q Do you remember a guy named Patty Boy?

A Are we talking about the Patty Boy that was straightened out, sir?

Q The Patty Boy that slapped your father.

A I heard of Patty Boy but I never met him.

Q You wanted to kill him?

A I didn't want to kill him. I think maim him would be

more sufficient, suffice.
Q Maiming?
A Hurt him really bad, bring him to intensive care, make an example out of him.
Q When was that that you wanted to maim him?
A I don't know the year but that was after he slapped my father.
Q That much disrespect required he be placed intensive care?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Do you know what a bad wire is?
A It could mean many different things.
Q Is one of the meanings to be a rat?
A Yes, sir.
Q In Mafia parlance, when somebody has a bad wire on them, that's another way of saying they're a rat?
A Yes, sir; that's correct.
Q It was a time in your life when there was actually a bad wire on you?
A Yes, sir, that is also correct.
Q When was it that there was a bad wire on you, Mr. Cicale?
A When I was released from prison and I started coming around, going around the Bronx in the year 2000, a kid Michael had put a bad wire on me claiming I was a rat, Michael Hippy.

Q Michael Hippy, he was somebody who hated you?
A Somebody I robbed earlier when I was in my younger years.
Q In your younger years you actually brandished a gun, robbed him of drugs or money?
A Yes, sir; that's correct.
Q At the time he put the bad wire on you, he was around somebody?
A At the time he put the bad wire, I wasn't aware that he was around somebody.
Q Have you since learned he was around somebody?
A Later on; yes, sir, I found out he was around somebody.
Q He was with the West Side?
A Later on, yes, I learned he was around the West Side.
Q He was with the Genovese Family?
A Yes, sir; that's correct.
Q Was he made?
A To the best of my recollection, no, he was not made at that time.
Q Has he ever been made as you know?
A Yes, sir, he has been made. He's a soldier in the Genovese Crime Family, currently incarcerated.
Q When it came time for you to move over to the Bonanno and Massino crime family, it came to Vincent Basciano's attention, as you're aware, there was a bad wire on you?
A Yes, sir; that's correct.

Q Vincent Basciano stood by you?
A Yes, sir, he did.
Q Because Vinny Basciano told the West Side "You got proof?"
A No, Vincent Basciano brought it to somebody in the Lucchese Crime Family. The person who brought it to Vincent Basciano's attention was a captain in the Lucchese Crime Family.
Q Vincent Basciano didn't just go wild and do anything to you because of a rumor of a bad wire?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Vincent Basciano stood up for you?
A After extensively checking into my background, yes, Vincent Basciano stood up for me.
Q Obviously, he didn't check well enough.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
MS. ARGENTIERI: Move to strike.
MR. GOLTZER: No further questions.
THE COURT: Last question is stricken.
Redirect examination?
REDIRECT EXAMINATION
BY MS. ARGENTIERI:
Q The person who HIT your father, what was his name?

A Fat Pat.
Q Did you tell the defendant what you wanted to do to Fat Pat?
A Yes, I did. Actually, I informed Vincent Basciano what I wanted to do and Vincent Basciano gave me the okay, the approval and actually instructed Anthony Donato to go with me.
Q What did the defendant tell you you could do?
A Whatever I wanted to do to make an example out of him, to make an example out of Fat Pat. I could do whatever I want, hurt him, kill him, whatever. It was up to me, my decision.
Q Since you cooperated, have you been in prison?
A Yes, ma'am, I have.
Q Have you ever been in prison since your cooperation or before with Big Lou?
A No, ma'am, I haven't.
Q Joseph Massino?
A No, ma'am, I haven't.
Q Since your cooperation, have you been in prison with Joseph Massino?
A Actually I never met Joseph Massino nor did I ever meet Big Lou.
Q Since your cooperation, have you been in with Jimmy the General?
A No.
Q Joey Gambina?

A No, ma'am, I have not.
Q When was Joseph Massino's trial; do you recall?
A To the best of my recollection, it was some time in 2003.
Q Was that before -- you said you received 302s from witnesses who testified at that trial; is that correct?
A Yes, ma'am, that's correct.
Q At the time that trial occurred, was Randy Pizzolo dead?
A No, ma'am, he was not.
Q Was there anything in the 302s you read from those cooperators about the Randy Pizzolo murder?
A No, ma'am, there was nothing in them.

MS. ARGENTIERI: No further questions.

THE COURT: Anything else?

MR. GOLTZER: No, thank you.

THE COURT: Activity we'll take a brief break. All rise for the jury.

(Jury leaves courtroom.)

THE COURT: The witness may step down. You're excused.

THE WITNESS: Thank you.

THE COURT: We're going to take a two-minute break. Then we'll bring in the next witness. I'm going to ask the government to have the witness ready so we can get started.

Two-minute break.

(Recess.) (Continued on next page.)

(court resumed)

(Jury is not present)

THE COURT: All right. Bring in the jury.

MR. DENNEHY: May ask the Court to give the jury an instruction.

THE COURT: Is this something about a limitation?

MR. DENNEHY: Yes, Your Honor.

THE COURT: All right.

(Pause in the proceeding)

Are we all set?

MR. DENNEHY: Yes. Sorry.

THE COURT: Bring in the jury, please .

Oh, counsel, I just want to let you know the next two weeks beginning Monday I'm the miscellaneous judge, so it may require me to take certain matters briefly that come up that would ordinarily go to other judges who are not available. So I just mention that. It's a further complication of already complicated existence here.

Thank you.

(The following took place in the presence of the jury)

THE COURT: Please be seated.

You can remain standing, sir. Call your next witness.

MR. DENNEHY: The government calls general row

supplement barber really.

G E N E R O S A B A R B I E R I , having been first duly sworn/affirmed, testified as follows:

THE CLERK: Please have a seat and state and spell your full name for the record.

THE WITNESS; G-E-N-E-R-O-S-A B-A-R-B-I-E-R-I.

THE COURT: You may inquire.

MR. DENNEHY: Thank you.

DIRECT EXAMINATION

BY MR. DENNEHY:

Q Can you pull your microphone closer to you, sir. Good evening.

A Good evening.

Q Speak right into the microphone?

Were you ever in the Mafia.

A Yes.

Q Which family?

A Bonanno family.

Q What ranks did you hold in the Bonanno Crime Family?

A Associate, a made member and acting captain.

Q For whom were you an acting captain?

A James Tartaglione.

Q For, approximately, how long were you acting captain to James Tartagliano?

A Around ten years.

Q Did you know Randy Pizzolo?
A Yes.
Q For about how long?
A About ten years also.
Q When you first knew Randy Pizzolo did you have any problems with him?
A Not at the beginning.
Q Did you have problems with Randy Pizzolo at the end?
A Yes.
Q What types of problems?
A He was bothering some guys in my neighborhood, older gentleman in my neighborhood, and he was trying to take over some of my spots -- some oil company.
Q Did you complain about Randy Pizzolo in the end?
A Yes, I did.
Q Complain to who?
A Big Louie.
Q Did you complain a little or complain a lot?
A I complained not much and it was straightened out right away.
Q Did you later explain when you made those complaints about Randy to Big Louie he was tape-recording it?
A Yes, I did.
Q Did you later learn that you had said to Big Louie on tape you'd like to get Randy in a dark alley?

A Yes, I did.
Q Did there come a time you when you learned Rand Pizzolo had been murdered?
A Yes, I did.
Q Where were you when you found out that Randy Pizzolo had been murdered?
A In jail.
Q In which jail?
A MDC Brooklyn.
Q Were you upset about it when you learned that Randy had been murdered?
A No.
Q How did you learn that Randy had been murdered?
A I saw it in the newspaper that Vinny Basciano showed me.
Q A story about Randy being murdered in the paper?
A Yes.
Q When Vinny Basciano showed you that story what, if anything, did he say?
A That I owed him one.
Q What happened next?
A He walked away.
Q How?
A Well, like a bravado attitude.
Q What happened after that?
A I was sitting down with Patty DeFilippo and he said his

mouth is his own worst enemy.
Q And approximately, when was that, sir?
A Around 2004, the end of 2004.
Q How old are you?
A Fifty-two.
Q Tell the jury where you grew up.
A Queens.
Q What part the of Queens did you live in?
A Astoria and later on, when I got married, in Maspeth.
Q How far did you go in school?
A I graduated high school.
Q Which high school?
A Long Island City.
Q In what year?
A Seventy-six.
Q With whom did you live growing up?
A My mother and father.
Q What did they do?
A My mother worked as a waitress and my father worked for the Department of Sanitation.
Q New York City Department Sanitation?
A Yes.
Q When you were younger did you have a nickname?
A Not when I was younger, no.
Q Did you ever obtain a nickname?

A Yes.
Q What was it?
A Jimmy the General.
Q Where did the Jimmy come from?
A I owned a bar -- an Irish bar in New York -- I mean in Queens and I didn't trust the people that I was dealing with, so I told them my man was Jimmy and that kind of stuck.
Q Where did the general come from?
A That's part of my name Generosa.
Q After you graduated high school did you have any legitimate jobs?
A Yeah, I worked painting lines, and I worked for a hearing aid company.
Q Painting the lines where?
A In the street.
Q Is that full time work?
A Seasonal. I worked most summer months. I was off a few months in the winter.
Q About how old were you when you had those jobs?
A The first job, the hearing aid job, I was around 16, and the lines are from 18 to probably around 20.
Q Growing up in that neighborhood did you know anyone that was "in the life"?
A Yeah.
Q Tell the jury what you mean by "the life"?

A He was connected to the Bonanno family.
Q Who was that?
A Robert Copozzio (ph).
Q What did they call him in the street?
A Captain.
Q How old was Bobby Copozzio when you first met him?
A Around 40.
Q How old were you?
A Around 13, 14.
Q Just describe how that happened, how did you end up with this 40 year old guy?
A Well, the whole neighborhood was -- he was like a mentor to the neighborhood. Good athletic guy, driving a fancy car, hanging out in the club around the corner from my mother's house.
Q Wars that?
A On 36th Avenue and Tenth Street.
Q In what part of Queens?
A Ravenwood.
Q What was the name of that club where Bobby Capozzio used to hung out?
A Black Eagle Social Club.
Q What went on there?
A Illegal activity, gambling, sports betting, numbers, stolen property. All the illegal activity -- shylocking.

Q When you were a kid which seemed more exciting, painting the lines in the street or hanging around with Bobby Capozzio?
A Hanging around with Bobby Capozzio.
Q Did you start to do that?
A Yes.
Q How often?
A Almost every day.
Q What types of things did you do with him?
A Gambling, going to the racetrack, stealing, stolen property, swag.
Q Did you want to be like him?
A Sure.
Q What role, if any, did you have in going with him?
A I had a bookmaking office.
Q What does that mean?
A I took bets, sports and horses.
Q As a kid how would you actually take bets?
A I used to pick up bets from this Italian deli in the neighborhood and I was bringing the bets to the club that Capozzi hung out in.
Q What was that club?
A The Black Eagle.
Q When you say you take the bets, literally what would you do?
A The guy that owned the business would give me the bet to

bring to the bookmaker.
Q What types of games or action did you take bets on?
A Mostly horses in them days.
Q Was Bobby Capozzio affiliated with any other members of the Bonanno Crime Family?
A Yeah, Sonny Black and Rusty Rastelli.
Q Who is Rusty Rastelli at the time?
A The boss of the Bonanno at the time.
Q And who was Sonny Black at the time?
A The Captain of the Bonanno family.
Q During those times about how much time a day or a week did you spend hanging around the Black Eagle social club with these mobsters?
A A lot of time.
Q How much time?
A Hours everyday.
Q What would go on in the club itself?
A Card playing, gambling, betting.
Q Did you ever become a runner in a sports betting operation?
A Yeah.
Q Tell the jury what a runner does.
A I used to take the bets and bring it to the bookmaker.
Q What were some of the places where you would go to take the bets from?

A Talking about when I was a kid first or later on?
Q As you got older?
A I worked for Nicky Santora who was around Sonny Black at the time. I used to take bets in Maspeth in this Irish bar Micky's Place end we picked up all numbers and bets from all around the area in Maspeth.
Q Did there come a time when you went into business for yourself.
A Yes.
Q And about how long how old were you?
A I started when I was taking of the bets from the grocery store. They never used to win so I used to keep half of the bets and only turn in half of it.
Q So someone in the grocery store would place bets with someone at the club?
A Right, but I was the guy that bring it everyday.
Q How much did the guy in the grocery store typically bet?
A Around $60 a day.
Q On a horse?
A Yes.
Q Horses?
A Yeah.
Q And how often did the guy win?
A Never.
Q So what did you start doing with this $60 bet?

A I used to only turn in half of it.
Q What did you do with the other half?
A Book it myself.
Q And when the guy lost was anyone the wiser?
A No.
Q And on the rare occasion when the guy won, what would you doing?
A I would put in the money that he won -- half of it.
Q Which happened more often?
A He always lost.
Q So did you start to take action yourself as you got older?
A Yes.
Q And how did you do that?
A Different spots in the neighborhood. I knew the people because I lived there my whole life.
Q Were you making money on that?
A Yeah.
Q More than painting lines in the street?
A I don't know. I used to make good money painting the lines, too.
Q Which was all year round, bad weather and good weather?
A The booking.
Q You said you were engaged in shylocking later on?
A Right.

Q When did you start shylocking?
A Around 16 years old.
Q Tell the jury what it means to be a shylock.
A You lend people money for interest.
Q What is that interest called?
A Vig.
Q What else?
A Juice.
Q What else? What are points?
A That's interest, the juice.
Q When you started becoming a shylocking as a teenager how much money did you lend out?
A Started off at $100, then gradually grew.
Q How big did it get?
A I lent people up to 80, 90,000.
Q How much would you charge them on that?
A Three percent.
Q So if I borrowed $100,000 from you how much would you charge me?
A Three percent.
Q And how much is that a week?
A $300 -- no. It's $3,000. Excuse me. You said 100,000?
Q If you lend me $100,000 what would you charge me?
A Three thousand a week.
Q How often would I have to pay the 3,000?

A Every week.
Q And if I paid it every week for 50 weeks that's how much?
A For three thousand, fifty weeks, it's hundred thousand.
Q How much do I owe on a hundred that I borrowed?
A You will still owe me 100,000.
Q How is that?
A It's only interest.
Q Suppose one week I don't have the 3,000?
A I would discuss it with you.
Q Discuss it how?
A Nicely at the beginning.
Q How long would it take before it wasn't nice?
A Not too long.
Q How much money did you make in your life as a shylock?
A Probably millions of dollars.
Q Were there times when people didn't have the money?
A Yeah.
Q So you lost?
A You lost some and you won some. Sometimes they run away, sometimes you have to explain it to them a different way.
Q Meaning what?
A Some violence.
Q What happens to the people that do pay?
A What do you mean what happens to the people that do pay?
Q Where does that money go?

A In my pocket.
Q And over the course of your life as a shylock do you win more or do you lose more?
A You always win as a shylock.
Q You know what it means to be on record with someone in organized crime?
A Yes.
Q Tell the jury what that means.
A When you are on record with somebody usually, with a made member, anything you do to get a piece of you can't go around nobody else because you're are on record with that particular guy. If you ever a problem they sit down for.
Q What does it mean to have a sit-down?
A It's a discussion between two made members.
Q What happens at the end of sit-down?
A It's usually resolved with a conclusion of who wins and who loses.
Q So growing up and getting involved in the life who is the first person you got on record with?
A Big Louie.
Q Well, before that?
A Capozzio. Originally Bobby Capozzio.
Q Who was he on record with, if anyone?
A Sonny Black and Rusty Rastelli.
Q Did there come a time in the early 1980s that you got

arrested?
A Yes.
Q For what?
A Credit cards.
Q Tell the jury what you did?
A I bought a TV with a forged credit card.
Q In the process of buying the television with the forged credit card what happened?
A I got caught.
Q Did you get arrested?
A Yes.
Q What were you charged with?
A Using a forged instrument.
Q You know what name was on the fake credit card?
A No, I don't.
Q Nevertheless, what happened to that case?
A I got three years probation. I copped a plea.
Q What were you guilty?
A Yes.
Q Did there come a time when you began to hang out at other social clubs in addition to the Black Eagle?
A Yes.
Q Which ones?
A The Rust Street Club.
Q Whose club was?

A Joe Massino.
Q And at that time who was Joe Massino?
A He was the boss of the Bonanno family.
Q How was it that you came to hang around Joe Massino's club?
A Robert Capozzio took me there.
Q Did Joe Massino have a partner in the club?
A Sal Vitale.
Q Prior to meeting Sal Vitale and Joe Massino at the Rust Street Club did you have any connection to them?
A Yes.
Q Tell the jury what it was.
A My cousin was married to their niece.
Q Those two men had a niece in common?
A Yes.
Q Who is that?
A Sal's sister is married to Joe and there other sister had a daughter who was married to my cousin.
Q And when you started hanging around the Rust Street Club was that something that was known amongst you and them?
A Yes.
Q So you had met Joe Massino and Sal Vitale functions outside the Rust Street Club?
A Yes.
Q Such as what?

A My cousin's engagement, wedding.
Q What did you do at the Rust Street Club when you went?
A Played Continental.
Q What is that?
A It's a card Gambina.
Q What type of card game?
A It's something like gin rummy but with jokers.
Q And what night of the week would that game be held?
A Tuesday night.
Q Bobby Capozzio would bring you?
A Yes.
Q Why was that?
A Because he didn't have the money to play so he made me play.
Q At that point were you a shylock and a sports better?
A Yes.
Q And how did you do playing Continental with these guys at the Rust Street Club?
A I won sometimes. I lost sometimes.
Q Is that illegal having that card game?
A Yes.
Q How so?
A Because they cut the game and they don't pay taxes on the money.
Q When you say "cut the game" what does that mean?

A They take ten percent out of every pop.
Q What is the biggest size pot you ever saw back in the 80s in that club?
A Thousands of dollars.
Q And when is the last time you hung around with Bobby Capozzio?
A Around 1985.
Q What day?
A Probably May 8th.
Q How do you know the date?
A Well, I know he disappeared on May 9th because it was my father's birthday.
Q The fact May 9th was your father's birthday what, if any, effect does that have on you?
A I was supposed to drive him somewhere that day and because where I took my father I didn't drive him.
Q So who drove Bobby Capozzio on May 9, 1985?
A Another guy that hung out in other club, Frank Paladi (ph).
Q What was he known as?
A Tweet Tweet.
Q What happened to Tweet Tweet that night?
A He got killed.
Q Was his body found?
A Yes.

Q Where?
A In a car.
Q What happened to Bobby Capozzio that night?
A He went missing.
Q For how long?
A Forever.
Q Do you know why?
A No.
Q What effect, if any, did that have on you at the time?
A I started to stay away from the mob at that time.
Q Why?
A Because he was my mentor, and they killed him, and I don't want to be involved in it.
Q Did you continue taking action on the sports?
A Yes.
Q Did you continue shylocking?
A Yes.
Q Did there come time when the Bonanno family came back into your life?
A Yes.
Q Tell the jury how that happened.
A Well, I was shylocking a customer in the diner in Maspeth and the guy wasn't there and I was having breakfast.
Q Who was the customer?
A His name was Nick the Greek.

Q And he owed you money?
A Yes.
Q So you're in his diner having breakfast?
A Yes.
Q What happened?
A I was having breakfast, but he wasn't there and two guys came in that he must have owed them money. Later I found out he owed them money. They started abusing his wife.
Q They started abusing the wife of Nick the Greek?
A Yes.
Q So what did you do?
A I the them out of the restaurant.
Q Physically?
A Physically.
Q Did you later learn who those two guys were?
A Yes.
Q Who were they?
A One of them -- I learned one them was Vinny the Ginny.
Q Who was Vinny the Ginny?
A I later found out that he was around Louie Restiveo, captain in the Bonanno family.
Q Who did you learn that from?
A Red Hubert (ph).
Q Who was Red Hubert?
A He was the guy that I used to turn in action to who was

around the Genovese family.
Q What, if any, discussion did you have with Red Hubert about the fact that you were throwing these guys out of the diner and they were with Louie Restive?
A Red said you're going to have a problem with Louie Restivo. He said I'm not worried about it because worse comes to worse I'll get in touch with Joe Massino and Sal Vitale through my cousin.
Q Is that what happened?
A No, he convinced me in to going to meet Big Louie.
Q Who was Big Louie at the time?
A Captain in the Bonanno family.
Q Did you agree to meet him?
A Yes.
Q And after you met with Big Louie what happened with respect to these guys from the diner?
A Big Louie squashed it with Louie Restive.
Q Squashed it how?
A He told him I was around him and that the guy in the diner owed me money and that's why I was there also.
Q So did you ever have any trouble with the guys that Nick the Greek owed the money to from the west side?
A From where?
Q Who were the guys you threw out of the diner, they were around who?

A They were around Louie Restive. They were in the Bonanno family.
Q And did you have any problems with that incident as a result of this?
A No.
Q What, if anything, happened between you and Big Louie?
A We became very close.
Q Were you put on record with him?
A Yes.
Q And did you become a member of his crew?
A Yes.
Q Who else was in his crew around that time?
What time is this?
A Around '86, '87.
Q When you began handing around with Big Louie and becoming part of this crew who else was in this crew?
A Johnny Palazzolo. Crazy Charlie, Frankie Coppa, Spanish Carmine, Ronnie Calucci (ph), Armando, Ronnie Lorenzo, Sally Penn, Al Walker, maybe a couple others that I can't recall right now.
Q Do you know a guy named Paul Spina?
A Yes.
Q Who was he?
A He was in Big Louie's crew a lot later.
Q Did you begin to commit crimes on behalf of Big Louie and

his crew?
A Yes.
Q What types of crimes?
A Everything from sports betting to murder.
Q Did there come a time when you met defendant Vincent Basciano?
A Yes.
Q Approximately when was that?
A Mid to late 80s.
Q Where was it?
A Probably Grand Avenue Club.
Q How was it that you came to be introduced to Vincent Basciano?
A Big Louie was bringing me there and Patty DeFilippo was bringing him there.
Q Why was Big Louie bringing you to Grand Avenue Club?
A He was showcasing me around.
Q What does that mean?
A He was letting people know me because he had intentions of sponsoring me.
Q Sponsoring you for what?
A To be a made member in the Bonanno family.
Q Who was Patty DeFilippo?
A He was the captain in the Bonanno family.
Q What was he doing with Mr. Basciano at the time?

A The same thing, showcasing Vinny around.
Q And whose club was Grand Avenue Club at the time?
A Sal Vitale was running it. It was his and Joe Massino's.
Q And what, if anything, was it near?
A Library.
Q Had you ever met the defendant at the Black Eagle club?
A He came to my club a couple of times.
Q Did there come a time when the Black Eagle Club became yours and Big Louie's?
A Yes.
Q Who did you guys inherit it from?
A From Anthony Calienti.
Q And approximately when --from what time period did you and Big Louie operate Black Eagle Club?
A Around '88, 89 to '95.
Q What happened in '95?
A We got a word from Joe Massino to shut all the clubs down.
Q Did you have an understanding of why?
A Because we were on the FBI surveillance.
Q In fact, did you shut down the club?
A Yes.

(Continued on next page)

CONTINUED DIRECT EXAMINATION
BY MR. DENNEHY:
Q To your knowledge when you first met Mr. Basciano, what if any position did he have in the family?
A He was an associate like me.
Q You said you committed murder for Big Louie's crew?
A Yes.
Q When was the first time?
A Around '91.
Q Who did that involve?
A I was -- I had to get rid of a car.
Q What if anything was in the car?
A A body.
Q Whose body?
A Later I found out it was Anthony Tomasulo's.
Q Who was he?
A He was an associate of the Bonanno Family, Bootsy's kid.
Q How did you first come to learn that you were going to participate in that?
A Big Louie told me we had to go to a restaurant and wait for Sal Vitale to come and bring us a key to the car. I had to get rid of the car.
Q At the time did you think you were just getting rid of a car?
A Yes.

Q Did that change?
A Yes.
Q How?
A When I got in the car, a funny smell in the car.
Q Funny how?
A It was a bad odor.
Q What if anything else was suspicious about the whole activity?
A Big Louie told me to wear gloves.
Q What type of vehicle was the body in?
A Like an SUV type.
Q Where did you and Big Louie get the car?
A In Greenpoint.
Q Brooklyn?
A Yes.
Q Generally, what was is the car, the vehicle located near when you picked it up?
A One of the Bonanno -- Joe Saunder's clubs, a couple of blocks away.
Q Did you in fact get in the car with what you learned to be the body?
A Yes.
Q Where did Big Louie go?
A He followed me in his car.
Q When you were driving away in the vehicle with the body

in it, was there anyone else standing there watching?
A They weren't standing. They were sitting in another car.
Q Who was that?
A Sal Vitale, Joe Saunders, looked like Mickey Bats and Tony Green were in the car.
Q What if anything were you told to do with the car?
A Just drive it far away, leave it there.
Q What did you do?
A I drove it to Kissena Boulevard, left it in that area.
Q How did you leave the scene after you dumped the car?
A Big Louie picked me up.
Q Where did he take you?
A Back to my car.
Q Did you ever learn why Bootsy's kid was killed?
A Supposedly robbing money from the machines that his father left him.
Q What type of machines?
A Joker-poker machines.
Q Were you involved at all in his actual murder?
A Yes.
Q How?
A I drove the car away.
Q From that point forward, did that have any significance to you?
A I guess it brought me closer to being a made member of

the Bonanno Family.
Q Why was that?
A Because I was starting to get involved in the mob through a murder.
Q Did you participate in another murder for Big Louie?
A Yes.
Q Who murdered?
A Russell Mauro.
Q Approximately when was that?
A '91.
Q How did you learn that Russell Mauro was going to be murdered?
A Big Louie told me.
Q What did he tell you?
A He told me to have our club empty tomorrow at 3:00 o'clock.
Q Which club?
A The Black Eagle Social Club.
Q When he told you to empty the club, what if anything did you expect?
A Something was going to happen in the club.
Q Did you have the club emptied at three that next day?
A Yes.
Q What else were you told to do?
A Bring the weapons.

Q What did you do?
A I got three guns.
Q From where?
A From my mother's house.
Q Where did you hide the guns in your mother's house?
A In some boxes on a shelf.
Q How many guns did you bring to the club?
A Three.
Q What type of guns were they?
A .25 automatics.
Q When you got to the club, was anything explained to you about what would happen?
A Yes.
Q Who explained it to you?
A Big Louie.
Q What did he tell you?
A He told me Russell is going to pull up to the club. John is going to bring him into the back of the club about some stocks, stocks and bonds. Petey Box Cars and Joe Desi would come out of a hallway entrance, shoot Russell. If they miss I had the third gun to shoot him if they miss.
Q Petey Box Cars, what's his full name?
A Peter Cosoleto.
Q Somebody else you mentioned?
A Joe DeSimone.

Q Was Russell lured into the club?
A Yes.
Q By whom?
A Johnny Palazzolo.
Q Where were you when it happened?
A I was in the front of the club at the beginning.
Q Where were Petey Box Cars and Joe Desi?
A In the hallway.
Q Doing what?
A Waiting for Russell to get lured to the back.
Q With the guns?
A Yes.
Q Tell the jury what happened when Russell went to the back.
A They came out of the hallway, shot him a few times in the head.
Q After Russell Mauro was murdered in the club, what happened next?
A We had to dispose of the body.
Q Did you fire any weapon?
A No.
Q Did you have one?
A Yes.
Q Were you ready to fire?
A Yes.

Q Were you instructed to fire?
A Yes.
Q Could you say no?
A No.
Q Why not?
A I would get killed.
Q After Russell got killed, what happened next?
A I took the guns from the other two guys. They left. We started cleaning up the mess, Sal Vitale and Nicky Bats pulled up to the club. They came in, pulled out Russell's car after we put the body in the trunk.
Q What did you put the body in before you put it in the trunk?
A A body bag.
Q What, if anything, was done with the body?
A Excuse me?
Q What was done with the body?
A It was put in the trunk of the car, driven away.
Q Did you clean up the club?
A Yes.
Q Did you get rid of the guns?
A Yes.
Q How?
A I drove them about ten blocks away, threw them in the sewer.

Q Why?
A So nobody could find them.
Q What were you worried about?
A The ballistics on the guns that were committed in a murder.
Q Did you ever learn why Russell Mauro got murdered?
A I heard two different stories.
Q What was the first story you heard?
A One, he disrespected Sal Vitale, something about a watch was stolen. The other one John Gotti wanted him killed.
Q Did you learn why John Gotti supposedly wants Russell killed?
A No.
Q What type of guy was Russell?
A A wild guy, violent guy.
Q Wild how?
A He stabbed a guy at a wedding one time. He would shoot up places.
Q How do you know he shot up a place?
A Big Louie told me.
Q Whose place did he shoot up?
A I don't recall.
Q At the time Russell Mauro was murdered, what was your rank in the Bonanno Crime Family?
A Associate.

Q Had you ever heard the terms earners and shooters?
A Yes.
Q Tell the jury what that means.
A An earner is a guy that makes money for the mob. A shooter is a guy that kills for the mob.
Q At around this time what were you?
A I guess I was a little of both.
Q Did you get rewarded for that?
A I got straightened out, became a made member of the Bonanno Family.
Q What date?
A August 17th.
Q What year?
A 1991.
Q How did you learn that you were going to be straightened out in the Bonanno Family?
A Big Louie told me.
Q What did he tell you?
A He said you're going to get straightened out.
Q Did he tell you where?
A He told me to have my mother's house empty for the ceremony.
Q This is the house you grew up in?
A Yes.
Q Did you do that?

A Excuse me?
Q Did you do that, get the house empty?
A Yes, I told my mother and father to go out that day.
Q Was it ever explained to you why you used your mother's house to conduct the ceremony?
A They usually were always home. The FBI couldn't put no surveillance in the house.
Q Who sponsored you for your membership in the Bonanno Crime Family?
A Big Louie.
Q What does it mean to get sponsored? What's that process?
A First they send a paper around with your name, see if anybody blackballed you, to your family, then they send it around to the other families.
Q What, if anything do you understand about how a person is being proposed gets actually into a particular family?
A The boss has to approve it.
Q Do you know if your name was actually put on a list?
A Yes.
Q How do you know?
A Because later I saw it in the front page of the newspaper.
Q Which newspaper?
A The Daily News.
Q What did the Daily News say about that list?

A That John Gotti, Junior got caught with a list in his house.
Q Was your name actually on the list?
A Yes.
Q Whose spot in the Bonanno Crime Family did you learn that you had taken?
A Patty DeFilippo's father.
Q What position did he have in the family?
A I think he was a captain.
Q Who showed up at your house for the ceremony?
A Sal Vitale, Anthony Spero, George from Canada, Big Louie, myself, Anthony Nicole and Petey from Canada.
Q What position did Sal Vitale have at the time?
A He was the underboss.
Q Anthony Spero?
A Consigliere.
Q Why was Big Louie there?
A He sponsored me.
Q Why was George from Canada there?
A He sponsored Pete from Canada, Peter.
Q What position if any did George from Canada have at the time?
A I think he was on the committee at the time also.
Q You said Anthony Nicole was there?
A Yes.

Q Do you know his true name?
A No.
Q Who sponsored him?
A Patty DeFilippo.
Q Where was the ceremony held?
A In my mother's kitchen.
Q Tell the jury what happened.
A They asked us do we know why we're here. Of course we all said no.
Q What was that?
A Because we lied, weren't supposed to know what was going on.
Q What happened next?
A Then they told us some different rules about the Bonanno Family; that if you had any problems with anybody before this day, you didn't do anything about it, you couldn't do anything about it anymore. Never to speak to law enforcement. Never go out with another guy's wife. Not to sell drugs.
Q Where was Joe Massino on the day you got straightened out, if you know?
A Jail.
Q Were you ever told there was anything about your ceremony that was done differently?
A Yes, because of the FBI surveillance, they didn't use a knife and a gun.

Q Why is it typically a knife or a gun by your understanding?
A Because you live by the gun, you die by the gun.
Q How was the ceremony performed?
A Sal Vitale and Spero, they went through the ceremony, telling us all different things about what to do, what not to do. Then we locked hands and basically that's how it went.
Q You said they told you the dos and don'ts. What is the dos and don'ts, if you recall?
A The dos, there's only one boss. The only family is the Bonanno Family. If your mother is dying and the boss calls you, you leave your mother dying and the don'ts is what I said before. You never raise your hands to another made member. You don't sell drugs. You don't go out with another made member's wife. You don't talk to law enforcement.
Q What's the penalty for talking to law enforcement?
A Could be death.
Q What's the penalty for what you're doing here?
A Death.

MR. DENNEHY: Might be a good time to break, Judge.

THE COURT: Members of the jury, we'll recess at this time until 9:30 tomorrow morning. I'll remind you not to discuss the case with anyone. Do not discuss the case among yourselves. If you're taking notes, leave them in the jury deliberation room. Do not read, access or listen to or watch

any accounts of this case in the media. Do not attempt any independent research about the case. Do not visit any of the locations identified during the course of testimony.

We'll see you tomorrow morning at 9:30. Thank you for your attention to the trial. All rise for the jury.

(Jury leaves courtroom.)

THE COURT: The witness may stand down. I instruct you not to discuss your testimony with anyone; do you understand that?

THE WITNESS: Yes, your Honor.

THE COURT: You may step down, sir.

(Witness leaves courtroom.)

THE COURT: Does anyone have anything before we recess? I see you here, that leads me to think you might have something?

MS. ARGENTIERI: I wanted to put --

THE COURT: Everyone may be seated.

MS. ARGENTIERI: I wanted to put on the record, I know the court ruled on this. Just for the record, this is Andrew Watroba's affidavit. There's some question about whether he was actually incarcerated with Mr. Cicale. For the record, so it's clear, he says he was in unit G 43 with Dominick Cicale in 2005. The government actually has Mr. Cicale's prison records that entire time period. Dominick Cicale was never in prison in that unit.

THE COURT: Why don't you provide it to the defense? If they don't have it they should have it.

MS. ARGENTIERI: Yes, sir.

THE COURT: Tomorrow we're not going to have the charge conference. We'll have it Friday at 4:00 o'clock. We'll try to get you the first draft of the charge by tomorrow afternoon.

MS. MERKL: I want to advise the court at the pace we're going, remaining witnesses, we do suspect it's very likely we'll rest tomorrow.

THE COURT: That's important to know. Late in the day, early in the day, middle of the day?

MS. MERKL: Given the break in the day, I do expect we'll go into the afternoon. I don't know we'll be able to fill the afternoon.

THE COURT: I anticipate you may want to start the next morning and that would be fine with the court as long as we're finishing in the 4:30 to 5:00 o'clock range.

MR. GOLTZER: We're working diligently to get a bunch of people here, including the cooperators.

THE COURT: What I'm saying is I don't expect you to put your first witness on the moment the government rests if that's late in the day Thursday.

Anything else?

MR. DENNEHY: Given that schedule, is there any way

of at least floating the idea to the jurors if we worked in the morning straight through we could quit for the day? We might be done by 12:00 o'clock.

THE COURT: There's a problem in the middle of the day. The problem is one of the jurors has a commitment that could not be moved. It's very important, in my view and clearly important in the juror's view in the middle of the day. That's why that large block of time is needed.

MS. MERKL: For scheduling purposes, the defense has advised one of the first witnesses they would like us to produce is Mr. Vitale. That's the reason, in part, for filing that motion that we filed last night to get some clarity as to the scope of Mr. Vitale's anticipated testimony.

We also are not sure at this point, we understand the defense doesn't have to tell us everything, who else they are planning to call based on the cross-examination of Mr. Cicale. There seemed to be some hint they might be calling Joseph Barone, for example. We would raise the same questions about 613(b) issues with regard to additional witnesses of that sort that they intend to call.

MR. GOLTZER: We received a letter from the attorney for Tommy Lee, e-mail to the effect he intended to assert a Fifth Amendment privilege. We will tell the lawyer because we've subpoenaed Mr. Lee that we would object to that, ask him -- ask the government to produce Mr. Lee.

We would make a motion. We'll first argue to the court he has no basis. I assume the court would want to go in chambers with his lawyer and Mr. Lee. That issue has to be resolved. It won't take that long, I hope. The issue may come up as to whether we would be entitled to provide Mr. Lee's former testimony to the jury under Rule 804(b) in the event the privilege was upheld and immunity denied. I want to alert everybody to that possibility.

THE COURT: Thank you.

THE COURT: I'm advised Mr. Lee's lawyer sent a fax to chambers but that it didn't come through. I don't have a copy of it yet. We've asked them to resubmit it to us so we'll see what indeed he said.

I take it he indicated that he sent us a copy of the submission to you?

MR. GOLTZER: I just don't recall.

THE COURT: Anything further for tonight?

MR. DENNEHY: No, your Honor.

MS. MERKL: We're not clear whether we're producing Tommy Lee for Friday.

MR. FRANK: He would be coming from quite a distance.

THE COURT: We need to know. Is he a Friday or Monday witness?

MR. GOLTZER: Friday witness. If he's here first

we can resolve him first. We want to accommodate the marshals, too. They asked us to let us know who our first in-custody cooperator was. We told them it was Mr. Vitale. We're prepared to go with either one.

THE COURT: How long do you have for Vitale's testimony is my question?

MR. GOLTZER: A couple of hours.

MR. FRANK: The question, he needs to be produced because the attorney sets forth the basis for the client privilege.

THE COURT: We need him here.

MR. GOLTZER: We need him here.

THE COURT: I said it. I may want to question him about his assertion of the Fifth Amendment to hear it from his own mouth. I don't know, we'll take it one step at a time.

MS. MERKL: We want to get some clarity what is expected of us.

MR. GOLTZER: We won't put a witness on until Friday morning.

THE COURT: If we're going to have to resolve the questions that were raised in the submissions, we ought to have an answer by midday tomorrow from you as to your position, any proffer.

MR. GOLTZER: I want to make sure we don't have cross signals. We're good for Friday morning. That's our

first witness. Tomorrow is Thursday.

THE COURT: The first witness Friday morning you're going to call is Tommy Lee.

MR. GOLTZER: Yes.

THE COURT: And --

MR. GOLTZER: We'll take it one step at a time.

THE COURT: The next cooperator you're planning to call?

MR. GOLTZER: Sal Vitale.

THE COURT: Sal Vitale will appear on Friday it's anticipated.

MR. GOLTZER: Hopefully. At the least, independent of the issue of prior inconsistent statements, we would call him as a negative character witness which we already indicated.

THE COURT: I'm sorry, is there any possibility the government will end so early on Thursday afternoon that we're going to end up with a block of two hours without a witness? If that's the case, we need to start with the defense case Thursday afternoon.

About that, is there anyone who is not a cooperator who you could put on Thursday afternoon or at least have on standby on Thursday afternoon?

MR. GOLTZER: I think so.

THE COURT: Would you do so, just in case?

MR. GOLTZER: Sure.

THE COURT: I'll not start at 5:00 o'clock with your case. We'll start the next morning. If the government's case rests its case at 5:00 o'clock, we'll recess for the night.

The other question I have is about how long do you think the case is going to go?

MR. GOLTZER: I'm not sure. No more than four days, I guess, three days.

THE COURT: With that basically said to one and all, we'll have closings next week and I'm going to charge the jury next week. If I charge the jury before Friday, they're coming in Friday to deliberate. I'm not taking a three-day weekend after I charge the jury.

MR. GOLTZER: After the government rests, I assume we'll have a chance to make some issues on Rule 29?

THE COURT: You get all the rights you always have in federal court. You'll make your Rule 29 motion at the appropriate time, then I'll take your Rule 29 motion.

MS. MERKL: Depending upon the cross of the current witness, there's a fairly substantial possibility we will rest mid-afternoon.

THE COURT: Just have a witness or witnesses who can fill the balance of the day based on that representation on Thursday. Thank you. Good night.

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